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ABSTRACT

This document is intended to help school districts in Oregon develop procedures for the operation of local special education programs. The guide is formatted to show legal requirements in the left column of each page with sample procedures in the right column. The sample procedures are not required and are intended to work in conjunction with the Local Education Agency Comprehensive Application (the formal presentation of the district's policies and operating procedures for special education required by federal regulations). The document addresses the following 13 areas: (1) child identification; (2) confidentiality; (3) full educational opportunity goal; (4) comprehensive system of personnel development; (5) parent involvement; (6) participation in regular education; (7) individual education program; (8) procedural safeguards; (9) evaluation procedures; (10) private schools; (11) free appropriate public education; (12) application available to the public; and (13) nondiscrimination. Two appendices provide similar sample procedures for the areas of related services and discipline. A glossary completes the document. (DB)

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Sample Procedures for Special Education Services in Oregon School Districts

Second Edition, 1994

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FOREWORD

The purpose of this document is to help school districts in Oregon develop procedures for the operation of local special education programs. The first edition was written in 1991 by Department of Education staff with consultation from the Western Regional Resource Center at the University of Oregon, the National Association of State Directors of Special Education and field input from over 150 school district administrators, teachers, parents and others from across the state. The second edition was completed in 1994 providing legal updates. Consultation was also received on this edition from the Western Regional Resource Center and input was provided by the field during public meetings.

The document is formatted to show the legal requirements in the left column of each page with the sample procedures in the right column. School districts must follow the regulations shown on the left side. ***It is optional whether a district uses the sample procedures on the right side. The sample procedures are not required.*** Each district must have policies and procedures for special education which conform to the requirements of state and federal legislation. Final responsibility for the development of the required policies and procedures rests with each local district.

The sample procedures contained in the document work in unison with the Local Education Agency (LEA) Comprehensive Application. The Comprehensive Application is a school district application that contains the district's policies and operating procedures for special education required by federal regulations. If a district already has special education policies and procedures, or wants to develop its own, the policies and procedures must meet the criteria established by the Department of Education. The other option available to a district is to adopt the sample procedures found in this document.

The document contains the same thirteen areas as the LEA Comprehensive Application and is in the same order. The appendices include two additional areas for which there are no federal requirements for local district policies and procedures. However, districts may want to have procedures in these areas.

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34 CFR 300.220 Child identification.

Each application must include procedures that ensure that all children residing within the jurisdiction of the LEA who have disabilities, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, including a practical method for determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(A))

Note: The LEA is responsible for ensuring that all children with disabilities within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements of Secs. 300.560-300.576.

34 CFR 300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of Sec. 300.128, including:

   (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

   (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

   (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

ENTIFICATION

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the Oregon School Boards Association (OSBA) documents coded IGBA and IGBA-AR.

I. Public Awareness and Child Find

A. The school district will use an ongoing system to locate, identify and evaluate all children birth through 21 years residing within its jurisdiction, suspected of being eligible for special education. This ongoing system includes the following:

1. Conducting public awareness activities such as those described in I.B. of this section;

2. Evaluating those children suspected of needing special education following the procedural safeguards as described in Section 8 and the evaluation procedures as described in Section 9;

3. Collecting the annual census data to determine which students are receiving special education; and

4. Collecting data to determine the number of students who are eligible but not currently receiving needed special education and related services.

B. Methods used by the school district to conduct the awareness activities must include 1 below, and may include 2, 3 or other activities:

1. Local media resources including television, radio, or newspaper;

2. Direct contact activities that alert members of the community who may not easily understand English or who may live in rural or isolated geographic areas, including presentations at community meetings, business group meetings,

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in part 99 of this title.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

ORS 343.157 Duty of school districts to identify, locate and evaluate resident children in need of special education.

Pursuant to rules of the State Board of Education, school districts shall identify, locate and evaluate all resident children who may have disabilities and be in need of special education, early childhood special education or early intervention.

[1979 c.423 §4 (enacted in lieu of 343.077); 1991 c.749 §5; 1993 c.749 §5]

ORS 343.517 Parent-initiated referral to determine eligibility.

(1) Whenever the parent of a child believes that the child is eligible for early childhood special education or early intervention services or is concerned about the child's developmental progress, the parent may initiate a referral to the contractor, or the designated referral and evaluation agency, in the county where the child resides.

(2) Services contractors, community agencies or individuals in the community may also assist the family to initiate a referral if they believe that a child is eligible for early childhood special education or early intervention services or they are concerned about the child's developmental progress.

church sponsored meetings, and meetings of public employees and officials; and

3. Development of communication links with various agencies that provide services to students eligible for special education within the community, including dissemination of information of child find materials to hospitals, clinics, pediatricians, pediatric nurses, and social service professionals involved in family or child services.

II. Notification to Parents

A. The school district shall annually give notice to inform parents about the requirements of Child Find including:

1. A description of the extent to which notice is given in the native languages of the various population groups;

2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the agency intends to use in gathering the information, and the uses to be made of the information;

3. A summary of the policies and procedures which the agency uses regarding the storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. A description of all the rights of parents and children regarding this information including FERPA.

(3) Nothing in this section shall relieve school districts of the duty to identify, locate and evaluate preschool children with disabilities under ORS 343.157.

343.519 [1971 c.602 §10; repealed by 1975 c.621 §17]

343.520 [1955 c.658 §14; repealed by 1965 c.100 §456]

OAR 581-15-037 Identification, Location, Evaluation and Census of Handicapped Children.

(1) School districts shall identify, locate and evaluate all resident or nonresident children who may be handicapped and in need of special education and related services.

(2) School districts and Head Start Programs shall report to the Oregon Department of Education all resident or nonresident handicapped children as defined in ORS 343.035(2) who have been identified, located and evaluated and are receiving special education and related services from a public or private educational program.

(3) If no children have been identified, located, and evaluated as being handicapped, school districts shall report this fact.

(4) Reporting by school districts and Head Start Programs in conformance with section (1) of this rule shall be conducted December 1 of each school year.

(5) In accordance with ORS 343.221, school districts shall provide special education and related services designed to meet the unique educational needs of all resident handicapped children identified, located and evaluated.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 14-1983, f. 11-23-83, ef. 11-25-83

Sample Procedures

Federal and State Legal Obligations

34 CFR 300.129(a) Confidentiality of personally identifiable information.

(a) Each State plan must include in detail the policies and procedures that the State will undertake, or has undertaken, in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: The confidentiality regulations were published in the Federal Register in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act. Those regulations are incorporated in Secs. 300.560-300.576.

34 CFR 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in Secs. 300.560-300.574 are met.

(Authority: 20 U.S.C. 1414(a)(1)(B))

34 CFR 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of Secs. 300.562-300.569, an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures contained in this section can be found in the OSBA documents coded IGBAB, IGBAB-AR and JO/JOA/JOB-AR. Also the Oregon Department of Education publication, ***Student Records — Suggested Guidelines for School Districts, 1989*** *contains sample policies.*

I. Access Rights

A. For purposes of the right to examine education records in this section, "eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education. If an eligible student has a disability which prevents the student from exercising his or her rights, the student's parent may continue to act on the student's behalf.

B. The school district shall permit a parent, eligible student or a representative of the parent to inspect and review any education records directly relating to the student which are maintained by the school district.

C. The Designated Coordinator shall comply with a request from a parent or eligible student to inspect and review an education record without unnecessary delay and:

1. In no case more than forty-five (45) calendar days after the request has been made; and

2. Before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student.

D. The Designated Coordinator shall ensure that a parent or eligible student who requests an explanation or interpretation of any information contained in an education record receives an appropriate explanation or interpretation. Education records which contain psychological tests, personality evaluations, records of conversations and any written transcript of incidents relating to student behavior will be disclosed only in the

34 CFR 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part presence of an individual qualified to explain or interpret the records.

E. If requested by a parent or eligible student, the Designated Coordinator shall provide copies of the records containing the information without a fee if the Designated Coordinator determines that a failure to provide those copies would effectively prevent the person from exercising the right to inspect and review the records.

F. The Designated Coordinator shall presume that the parent has authority to inspect and review records relating to his or her child unless the district determines that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

II. Record of Access

A. The Designated Coordinator shall keep a record of parties obtaining access to education records including the name of the party, the date access took place and the purpose of the authorized use.

III. Records on More Than One Child

A. The Designated Coordinator shall permit a parent or eligible student to inspect and review only those portions of an education record which contain information regarding the student and shall inform the parent or eligible student of any other specific information regarding the student which is in the record but which cannot be directly inspected or reviewed because of the confidentiality rights of other students.

IV. List of Types and Locations of Information

A. The Designated Coordinator shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the school district.

(except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.566 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

V. Fees

A. If requested by a parent or eligible student, the Designated Coordinator shall provide copies of the records containing the information without a fee if the Designated Coordinator determines that a failure to provide those copies would effectively prevent the person from exercising the right to inspect and review the records.

1. The Designated Coordinator shall determine that a parent or eligible student will be effectively prevented from exercising the right to inspect and review an education record if the person cannot inspect and review the education record at the location at which it is normally maintained (or at any other location where the school district offers to produce it) without incurring significant expense or personal hardship.

2. The Designated Coordinator may charge a fee for copies of records which are made for a parent or eligible student if the fee does not effectively prevent the person from exercising the right to inspect and review those records.

3. The Designated Coordinator, in determining whether to charge a fee for the copying of an education record, shall not charge the parent or eligible student in question, when the Designated Coordinator determines that the amount of the fee for the copying of the document would result in a significant expense or personal hardship.

B. The Designated Coordinator may not charge a fee to search for or to retrieve information.

VI. Amendment of Records at Parent's Request

A. A parent or eligible student who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the student may request the school district to amend the information.

34 CFR 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Sec. 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement comment-

B. The Designated Coordinator, upon receiving a request from a parent or eligible student, shall decide whether to amend the information as requested within ten (10) days from the date of receipt of the request.

1. The Designated Coordinator shall determine that information contained in an education record is "inaccurate" if the Designated Coordinator, after reviewing the information, concludes that it is untrue or cannot be substantiated.

2. The Designated Coordinator shall determine that information contained in an education record is "misleading" if the Designated Coordinator, after reviewing the information, concludes that a person reading the record would likely arrive at an inaccurate conclusion regarding the personal characteristics or history of the student who is the subject of the educational record.

3. The Designated Coordinator shall determine that the information contained in an education record "violates the privacy or other rights of the student" if the Designated Coordinator determines that the information contained in the education record concerning the personal characteristics or personal history of the student:

    a. If disclosed, would cause adverse consequences such as severe embarrassment for the student or the student's parents; or

    b. Need not be included in the education record in order for the education record to be appropriately used by the school district.

C. If the Designated Coordinator refuses to amend the information, the Designated Coordinator shall inform the parent or eligible student of the refusal and advise the person of the right to a hearing under the Family Education Rights and Privacy Act (FERPA).

ing on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.570 Hearing procedures.

(1) A hearing held under Sec. 300.568 must be conducted according to the procedures under Sec. 99.23 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to part 99 of this title may not release information from education records to participating

VII. Opportunity for a Hearing

A. The school district will provide an opportunity for a hearing according to the procedures under FERPA to challenge information in the education records.

VIII. Result of a Hearing

A. If, as a result of a FERPA hearing, it is determined that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the Designated Coordinator shall amend the information and shall provide written notice to the parent or eligible student requesting the amendment.

B. If, as a result of a FERPA hearing, it is determined that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the Designated Coordinator shall inform the parent or eligible student of the decision of the right to place in the records which are maintained on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district.

C. The Designated Coordinator shall ensure that a statement placed in an education record as defined in these procedures:

1. Is maintained by the school district as part of the records of the student as long as the record or contested portion is maintained by the school district; and
2. Is disclosed by the school district to any party to whom the records of the student or the contested portion are disclosed.

IX. Hearing Procedure

A. The school district will provide an opportunity for a hearing according to the procedures under FERPA to challenge information in the education records.

agencies without parental consent unless authorized to do so under part 99 of this title.

(c) The SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.129 and part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

34 CFR 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and

X. Consent

A. The Designated Coordinator shall obtain written consent from the parent or eligible student before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in these procedures and only where the disclosure is consistent with all applicable federal statutes.

B. The Designated Coordinator shall obtain written consent from the parent or eligible student before permitting personally identifiable information to be used for any purpose other than meeting a requirement under these procedures.

C. The school district shall not release information from education records without parent consent unless authorized to do so under FERPA.

XI. Safeguards

A. The Designated Coordinator shall ensure that the confidentiality of personally identifiable information is protected at collection, storage, disclosure, and destruction stages.

B. The school district shall designate one official to coordinate special education records (Designated Coordinator/Keeper of the Records).

C. The Designated Coordinator shall ensure that each person collecting or using personally identifiable information shall receive training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information set forth in these procedures.

D. The Designated Coordinator shall maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information and keep a record of any authorized person who reviews the record who is not on the listing.

phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Note: Under Sec. 300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b) of this section.

34 CFR 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

(1) (i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

XII. Destruction of Information

A. The Designated Coordinator shall send a written notice to inform parents or eligible student when personally identifiable information collected, maintained, or used by the school district is no longer needed to provide educational services to the student. The determination as to whether personally identifiable information is needed to provide educational services to a student shall be made by the Designated Coordinator after careful review of the information and with the concurrence of the student's current teacher or teachers, if the student is currently enrolled in the school district.

B. The written notice sent to the parent or eligible student shall describe the personally identifiable information which the school district intends to destroy and shall inform the parents that the information will be destroyed no earlier than sixty (60) days from the date of the notice. The notice shall also outline the procedure which the parent or eligible student may follow if they wish to formally object to the destruction of the records in question.

C. Upon request of the parent or eligible student, the Designated Coordinator shall destroy such personally identifiable information provided that the Designated Coordinator may maintain a permanent record without time limitation of the student's name, address and phone number, grades and attendance record, classes attended, grade level completed and year completed.

Name of Program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Programs	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) (20 U.S.C. 10704-2)	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration and the Director of the National Institute on Disability and Rehabilitation Research	The Rehabilitation Act of 1973, as amended (29 U.S.C. 700, et seq.)	Parts 350-359. 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children.	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing.	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, et seq.).	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g).

34 CFR 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232)

Note: 34 CFR 300.560–300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.

34 CFR 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

34 CFR 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

34 CFR 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

34 CFR 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

- (1) Financial records, including any information those records contain, of his or her parents;
- (2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and
- (3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—
  - (i) The student has waived his or her right to inspect and review those letters and statements; and
  - (ii) Those letters and statements are related to the student's—
    - (A) Admission to an educational institution;
    - (B) Application for employment; or
    - (C) Receipt of an honor or honorary recognition.

(c) (1) A waiver under paragraph (b)(3)(i) of this section is valid only if—

- (i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and
- (ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3) (i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 209 U.S.C. 1232g(a)(1)(A) and (B))

34 CFR 99.20 How can a parent or eligible student request amendment of the student's educational records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under Reg. 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))
[53 FR 19368, May 27, 1988]

34 CFR 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b) (1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

34 CFR 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by Reg. 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency nor institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under Reg. 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

34 CFR 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in Reg. 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent of

an eligible student before it discloses personally identifiable information from the student's education records.

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made after paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

34 CFR 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Reg. 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of Reg. 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

Sample Procedures

(3) The disclosure is, subject to the requirements of Reg. 99.35, to authorized representatives of--

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4) (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5) (i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type of State or local officials to whom disclosures may be made under that paragraph.

(6) (i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9) (i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in Reg. 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in Reg. 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1) and (b)(2)(B))
[53 FR 19368, May 27, 1988]

34 CFR 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a) (1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the records must include—

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding

authorized under Reg. 99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under Reg. 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in Reg. 99.31(a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under Reg. 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))
(Approved by the Office of Management and Budget under control number 1880-0508)

Sample Procedures

34 CFR 99.33 What limitations apply to the redisclosure of information?

(a) (1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—

(1) The disclosures meet the requirements of Reg. 99.31; and

(2) The educational agency or institution has complied with the requirements of Reg. 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under Reg. 99.31(a)(11) or to disclosures to a parent or student under Reg. 99.31(a)(12).

(d) Except for disclosures under Reg. 99.31(a)(11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

34 CFR 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under Reg. 99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

  (i) The disclosure is initiated by the parent or eligible student; or

  (ii) The policy of the agency or institution under Reg. 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

  (1) The student is enrolled in or receives services from the other agency or institution; and

  (2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

34 CFR 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in Reg. 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

Sample Procedures

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under Reg. 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

34 CFR 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(i)(1))
[53 FR 19368, May 27, 1988]

34 CFR 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory informa-

tion if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—

(1) The types of personally identifiable information at the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A) and (B))

34 CFR 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

34 CFR 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with Sate or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

34 CFR 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(F) and (G))

ORS 336.185–.215

336.185 [1971 c.512 §1; 1979 c.274 §1; 1981 c.892 §93; repealed by 1993 c.806 §1 (326.565, 326.575 and 336.187 enacted in lieu of 336.185)]

ORS 336.187 When school authorized to disclose personally identifiable information on student; "health or safety emergency" defined.

(1) A public school or school district shall disclose personally identifiable information from an education record of a student to law enforcement, child protective services and health care professionals in connection with a health or safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.

(2) As used in this section, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 418.750 to 418.760 (1991 Edition).

[1993 c.806 §9 (326.565, 326.575 and 336.187 enacted in lieu of 336.185, 336.195 and 336.215)]

336.210 [Repealed by 1955 c.290 §1]

336.195 [1971 c.512 §2; 1973 c.827 §30; 1979 c.274 §2; repealed by 1993 c.806 §1 (326.565, 326.575 and 336.187 enacted in lieu of 336.195)]

336.200 [Repealed by 1955 c.290 §1]

336.205. [1971 c.512 §5; repealed by 1979 c.274 §4]

336.210. [Repealed by 1955 c.290 §1]

336.215. [1971 c.512 §3; 1975 c.557 §11; 1979 c.274 §3; 1993 c.45 §89; repealed by 1993 c.806 §1 (326.565, 326.575 and 336.187 enacted in lieu of 336.215)]

ORS 339.155 Prohibitions of certain fees as condition of admission; allowable fees.

(1) No district school board shall require payment of fees as a condition of admission to those pupils entitled under the law to free admission. However, the following are not considered as conditions of admission:

(a) Pursuant to ORS 339.141, but subject to ORS 339.147, tuition may be charged for courses not part of the regular school program.

(b) No charge shall be made for a standard, prescribed textbook but a security deposit may be required which may be refunded if the textbook is returned in usable condition. Supplemental texts shall be made available on loan.

(c) A deposit may be charged for a lock for a locker.

(2) A district school board may require pupils who do not furnish their own attire for physical education classes to pay an appropriate fee for uniforms provided by the district.

(3) A district school board may require pupils who do not provide appropriate towels for physical education classes to pay a fee for use of towels provided by the district.

(4) A district school board may require payment of fees for the use of musical instruments owned or rented by the district, the fee not to exceed the rental cost to the district or the annual depreciation plus actual maintenance cost for each instrument; except that children exempt from tuition under ORS 339.147 shall be loaned musical instruments by the school district without charge.

(5) Subject to ORS 339.147, a district school board may require payments of fees in any of the following:

(a) In any program where the resultant product, in excess of minimum course requirements and at the pupil's option, becomes the personal property of the pupil.

(b) Admission fees or charges for extracurricular activities where pupil attendance is optional.

(c) A security deposit conditioned on the return of materials, supplies or equipment including athletic equipment.

(d) Items of personal use or products which a pupil may purchase such as student publications, class rings, annuals and graduation announcements.

(e) Field trips considered optional to a district's regular school program.

(f) Any authorized voluntary pupil health and accident benefit plan.

Sample Procedures

(g) As used in this subsection, "minimum course requirements" means any product required to be produced to meet the goals of the course.

[1975 c.508 §1; 1977 c.99 §1; 1977 c.815 §3]

ORS 339.260 Injury to school property by pupil; withholding records until damage paid; waiver; rules; inspection.

(1) No pupil shall willfully damage or injure any school property or threaten or willfully injure any fellow pupil or faculty member.

(2) A pupil who violates subsection (1) of this section may be disciplined, suspended or expelled.

(3) Any school district which is owed a fee or the property of which has been lost or willfully damaged or injured may withhold the grade reports, diploma or records of the pupil who owes the fee or is responsible for the loss or damage until the pupil or the parent or guardian of the pupil has paid the amount owed.

(4) When the pupil or the parent or guardian of the pupil is unable to pay the amount owed under subsection (3) of this section, the school district may waive the amount owed.

(5) The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(6) Notwithstanding subsections (3) and (4) of this section, a school district shall not withhold the education records of a pupil in the circumstances described in ORS 326.575 and applicable rules of the State Board of Education or when such records are requested for use in the appropriate placement of the pupil.

(7) Before any grade reports, diplomas or records are withheld under subsections (3) or (4) of this section, a school district board of directors shall adopt rules of procedure which insure that the rights of the pupil to due process are protected.

(8) Nothing in subsection (3) of this section is intended to prevent

inspection of student education records by a parent or legal guardian pursuant to ORS 343.173, the rules of the State Board of Education and applicable state and federal law.

[1965 c.100 §290; 1971 c.561 §4; 1985 c.514 §1; 1993 c.806 §5]

OAR 581-22-717 Records and Reports.

(1) Required Records and Reports: The school district shall provide all records and reports required by the Oregon Department of Education.

(2) Student Activity Funds: The school district shall prescribe the purposes for which student activity funds may be obtained and used and the role of students in management and expenditure of funds.

(3) Education Records of Students: The school district shall maintain education records of students according to the provisions of OARs 581-21-210 through 581-21-440.

Stat. Auth.: HB 2062

OAR 581-21-210 Evaluating Student Transcripts.

When evaluating student transcripts, the school district shall:

(1) Accept credits and attendance completed in standard Oregon schools as if they had been earned in the enrolling district;

(2) For out-of-state transfer students, accept credits and attendance completed in standard secondary schools as if the requirements had been completed in this state;

(3) For students from private, alternative, or nonstandard public secondary schools:

(a) Determine the value of prior credits; and

(b) Determine the number of years of school attendance or equivalent.

(4) Determine placement for students enrolled in grades K/1 through 8;

(5) Determine the value of credits obtained through correspondence courses in meeting the graduation requirements; and

(6) Determine the value of credits obtained in approved community college programs in meeting graduation requirements.

Stat. Auth.: HB 2062

OAR 581-21-220 Definitions.

As used in OARs 581-21-220 through 581-21-440, the following definitions apply:

(1) "Attendance" includes, but is not limited to:

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(2) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to, the student's name, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. Directory information shall not include a student's address, telephone number, or photograph which may only be disclosed with prior consent under the conditions in OAR 581-21-330.

(3) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifi-

able information contained in those records, to any party, by any means, including oral, written, or electronic means.

(4) "Educational agency or institution" means any public or private agency or institution providing educational services to students birth through age 21, and through grade 12, that receives federal or state funds either directly or by contract or subcontract with the Department under any program administered by the United States Secretary of Education or the Department. "Educational agency or institution" does not include those programs specifically excluded under 34 CFR §99.1, Table 99-A.

(5) "Education records"

(a) The term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution;

(b) The term does not include:

(A) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record,

(B) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

(i) Maintained separately from education records,

(ii) Maintained solely for law enforcement purposes, and

(iii) Disclosed only to law enforcement officials of the same jurisdiction,

(C) Records relating to an individual who is employed by an educational agency or institution, that are made and main-

tained in the normal course of business, that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this subsection,

(D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity,

(ii) Made, maintained, or used only in connection with treatment of the student, and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution,

(E) Records that only contain information relating to activities in which an individual engaged after he or she is no longer a student at that agency or institution,

(F) Medical or nursing records which are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and which are not used for education purposes or planning.

(6) "Eligible student" means a student who has reached 18 years of age, or a student who is attending only an institution of postsecondary education and is not enrolled in a secondary school.

Sample Procedures

(7) "Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided.

(8) "Parent" means a parent of a student and includes a natural parent, a guardian, an individual authorized in writing to act as a parent in the absence of a parent or a guardian, or a surrogate parent appointed to represent a student with disabilities. The term does not include the state if the child is a ward of the state and the student is eligible for special education services or is suspected of being eligible for special education services under state and federal law.

(9) "Party" means an individual, agency, institution, or organization.

(10) "Personally identifiable information" includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) The telephone number of the student or the student's family;

(e) A photograph of the student;

(f) A personal identifier, such as the student's social security number or student number;

(g) A list of personal characteristics that would make the student's identity easily traceable; and

(h) Other information that would make the student's identity easily traceable.

(11) "Record" means any information recorded in any way including, but not limited to, handwriting, print, tape, film, microfilm and microfiche.

(12) "Student" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

Stat. Auth.: HB 2062

OAR 581-21-230 The Rights of Parents.

An educational agency or institution shall give full rights under OARs 581-21-220 through 581-21-420 to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

Stat. Auth.: HB 2062

OAR 581-21-240 The Rights of Eligible Students.

When a student becomes an eligible student, the rights accorded to, and consent required of, parents under OARs 581-21-220 through 581-21-420 transfer from the parents to the student. Nothing prevents educational agencies or institutions from giving students rights in addition to those given to parents.

Stat. Auth.: HB 2062

OAR 581-21-250 An Educational Agency or Institution's Policy.

(1) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of OARs 581-21-220 through 581-21-430. The policy shall include:

  (a) A description of how the agency or institution informs parents and students of their rights, in accordance with OAR 581-21-260;

Sample Procedures

(b) A description of how a parent or eligible student may inspect and review education records under OAR 581-21-270, including at least:

  (A) The procedure the parent or eligible student must follow to inspect and review the records,

  (B) A description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records, with an understanding that it may not deny access to education records,

  (C) A schedule of fees (if any) to be charged for copies, and

  (D) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(c) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in OAR 581-21-340;

(d) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under OAR 581-21-340(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. With respect to students with disabilities, each educational agency or institution shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;

(e) A statement that a record of disclosures will be maintained as required by OAR 581-21-400, and that a parent or eligible student may inspect and review that record;

(f) Specification by the educational agency or institution of the types of personally identifiable information the agency or

institution has designated as directory information under OAR 581-21-390;

(g) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under OAR 581-21-300, to obtain a hearing under OAR 581-21-310(1), and to add a statement to the record under OAR 581-21-310(3);

(h) A statement indicating whether the educational agency or institution has a policy of disclosing a student's address, telephone number, and photograph with prior consent of the parent or eligible student;

(i) A statement that the educational agency or institution maintains a permanent record on each student which includes the:

(A) Name of the school,

(B) Full name of the student,

(C) Student's birth date and place of birth,

(D) Name of parents/guardians,

(E) Date of entry into the school,

(F) Name of school previously attended,

(G) Subjects taken,

(H) Marks received,

(I) Credits earned,

(J) Attendance,

(K) Date of withdrawal from school,

(L) Social security number, subject to subsection (1)(j) of this rule, and

(M) Such additional information as the educational agency or institution may prescribe;

(j) A statement that the educational agency or institution will request the social security number of a student and will include the social security number on the permanent student record only if the student or parent complies with the request. The request shall include notification to the parent that the provision of the social security number is voluntary and notification of the purposes for which the social security number will be used;

(k) A statement that the educational agency or institution provides for the retention of permanent records in a minimum one-hour fire-safe place in the educational agency or institution, or for keeping duplicate permanent records in a safe depository outside the building;

(l) A statement that within ten working days of a student seeking enrollment in a public or private school, or when a student is placed in a state institution (other than an institution of postsecondary education), a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency shall notify the public or private school, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and shall request the student's education records. The new educational agency shall inform the parent of the procedures outlined in subsection (1)(m) of this rule, shall secure release of the parent's address and telephone number in the new location and, if provided, shall forward said address and telephone number to the former educational agency along with the request for records;

(m) A statement that, subject to ORS 339.260, the former educational agency shall provide notice to the eligible student or student's parent by telephone or regular mail within three working days of receipt of the request for transfer from the new educational agency that meets the following requirements:

(A) That the student's education records have been requested by the new educational agency and the date the request was received by the former educational agency,

(B) That the parent has the right to review the education records that are subject to transfer and to request an amendment of specified contents of the education records pursuant to OAR 581-21-300 if the parent believes that the contents are inaccurate, misleading or in violation of the privacy or other rights of the student. The parent is entitled to a hearing under OAR 581-21-310 if the former educational agency refuses the request to amend specified contents in the student's education record. The hearing shall be conducted pursuant to OAR 581-21-320,

(C) That the parent's written request for review or amendment of the education records must be received by the former educational agency before the tenth working day after the former educational agency's receipt of the request for records. Nothing shall prevent the parent from reviewing education records or requesting an amendment of the education records pursuant to OAR 581-21-270 and OAR 581-21-300 at any time after the education records have been transferred to the new educational agency,

(D) That the former educational agency shall transfer the education records of the student to the new educational agency on the tenth working day after receipt of the request for transfer unless the former educational agency receives the parent's written request for review or amendment of specified contents of an education record before that date, and

(E) That, if a parent requests for review or amendment the specified contents of an education record, all education records, except those subject to review or amendment, shall be transferred to the new educational agency on the tenth working day after receipt of the request for transfer.

Sample Procedures

(n) A statement that the education records transferred to the new educational agency shall include any education records relating to the particular student retained by an education service district. The former education agency shall retain a copy of the education records that are to be transferred pursuant to subsection (1)(r) of this rule;

(o) A statement that the notice requirement and other applicable provisions described in subsection (1)(m) of this rule may be provided to the parent by the former educational agency at the time the parent formally withdraws the student from the former educational agency;

(p) A statement that the education records of a student may be transferred to the new educational agency at any time, including before the tenth working day after the receipt of the request for transfer, if notice to the parent has been given by the former educational agency pursuant to subsection (1)(m) of this rule and the parent expressly waives his or her right to review and request an amendment of the student's education records;

(q) A statement that the educational agency or institution has a policy of disclosing personally identifiable information from an education record without the notice required in subsection (1)(m) of this rule, to an ESD, state regional program, or an educational agency other than those identified in subsection (1)(l) of this rule if a student seeks or intends to enroll in or is enrolled in or receives services from the educational agency. The term "receives services" includes but is not limited to an evaluation or re-evaluation for purposes of determining whether a student has a disability;

(r) Provision that copies of education records for students not found to be eligible for special education shall be retained for three years following the school year in which those records were created; copies of education records for students eligible for special education shall be retained for five years following the school year in which those records were created and copies of permanent records, as described in subsection (1)(i) of this rule, shall be retained permanently for all students; and

(s) A statement that the provisions in subsections (1)(l) through (p) of this rule do not apply to the records of a student who is transferring to another elementary or secondary school within the same school district. These education records shall be transferred within ten working days of receipt of a request for transfer.

(2) For purposes of subsection (1)(l) of this rule:

(a) "Private agency" means an agency with which the Department of Education contracts under ORS 343.961; and

(b) "Youth care center" means a center as defined in ORS 420.855.

(3) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

Stat. Auth.: HB 2062

OAR 581-21-260 An Educational Agency or Institution's Annual Notification.

(1) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under OARs 581-21-220 through 581-21-440. The notice must include a statement that the parent or eligible student has a right to:

(a) Inspect and review the student's education records;

(b) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(c) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that these rules authorize disclosure without consent;

(d) Pursuant to OAR 581-21-410, file with the United States Department of Education a complaint under 34 CFR §99.64 concerning alleged failures by the agency or institution to comply with the requirements of the Family Educational Rights and Privacy Act; and

(e) Obtain a copy of the policy adopted under OAR 581-21-250.

(2) The notice provided under section (1) of this rule must also indicate the places where copies of the policy adopted under OAR 581-21-250 are located.

(3) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(4) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

Stat. Auth.: HB 2062

OAR 581-21-270 Rights of Inspection and Review of Education Records.

(1) Except as limited under OAR 581-21-290, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.

(2) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(3) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(4) If a parent or an eligible student so requests, the educational agency or institution shall give the parent or eligible student a copy of the student's education records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in ORS 192.501(4) shall be provided unless authorized by federal law.

(5) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this rule.

(6) While an education agency or institution is not required to give an eligible student access to treatment records under the definition of "education records" in OAR 581-21-220(5)(b)(D), the student may, at his or her expense, have those records reviewed by a physician or other appropriate professional of the student's choice.

Stat. Auth.: HB 2062

OAR 581-21-280 Fees for Copies of Education Records.

(1) Student records are public records under ORS 192.410 through 192.505 but are exempt from disclosure except as authorized by OARs 581-21-220 through 581-21-440.

(2) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student subject to section (3) of this rule.

(3) Notwithstanding ORS 192.440(3), an educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

Stat. Auth.: HB 2062

OAR 581-21-290 Limitations on the Right to Inspect and Review Records.

If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

Stat. Auth.: HB 2062

OAR 581-21-300 A Parent or Eligible Student's Request for Amendment of a Student's Education Records.

(1) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(2) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(3) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under OAR 581-21-310.

Stat. Auth.: HB 2062

OAR 581-21-310 Right to a Hearing to Challenge Content.

(1) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(2) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:

- (a) Amend the record accordingly; and
- (b) Inform the parent or eligible student of the amendment in writing.

(3) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the educational agency or institution, or both.

(4) If an educational agency or institution places a statement in the education records of a student under section (3) of this rule, the agency or institution shall:

- (a) Maintain the statement with the contested part of the record for as long as the record is maintained; and
- (b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

Stat. Auth.: HB 2062

OAR 581-21-320 Minimum Requirements for the Conduct of a Hearing.

The hearing required by OAR 581-21-310 must meet at a minimum the following requirements:

(1) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(3) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under OAR 581-21-310. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Stat. Auth.: HB 2062

OAR 581-21-330 Prior Consent to Disclose Information.

(1) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in OAR 581-21-340.

(2) The written consent must:

(a) Specify the records that may be disclosed;

(b) State the purpose of the disclosure; and

(c) Identify the party or class of parties to whom the disclosure may be made.

(3) When a disclosure is made under section (1) of this rule:

  (a) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

  (b) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(4) The governing board of an educational agency or institution shall decide whether to allow the disclosure of student addresses, telephone numbers, and photographs. The disclosure of this personally identifiable information may only occur with prior consent of the parent or eligible student or under one of the exceptions to the consent requirement in OAR 581-21-340.

Stat. Auth.: HB 2062

OAR 581-21-340 Exceptions to Prior Consent.

With the exception of sections (5) and (10) of this rule, an educational agency or institution shall disclose personally identifiable information from an education record of a student without the consent required by OAR 581-21-330 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to school board members during executive session pursuant to ORS 332.061, or to other school officials and teachers within the educational agency whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of OAR 581-21-250(1)(l) through (q) and OAR 581-21-360, to officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other education agency where the student seeks or intends to enroll, or is enrolled in or receives services from the other agency or institution. The term "receives services" includes, but is not limited to, an evaluation or

re-evaluation for purposes of determining whether a student has a disability.

(3) The disclosure is, subject to the requirements of OAR 581-21-370, to authorized representatives of:

(a) The Comptroller General of the United States;

(b) The Secretary of the United States Department of Education; or

(c) State and local educational authorities.

(4) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:

(a) Determine eligibility for the aid;

(b) Determine the amount of the aid;

(c) Determine the conditions for the aid; or

(d) Enforce the terms and conditions of the aid.

As used in this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an education agency or institution.

(5) (a) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

(A) Develop, validate, or administer predictive tests,

(B) Administer student aid programs, or

(C) Improve instruction.

(b) The agency or institution may disclose information under this section only if:

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization, and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted;

(c) For the purposes of this section, the term "organization" includes, but is not limited to, federal, state and local agencies, and independent organizations.

(6) The disclosure is to accrediting organizations to carry out their accrediting functions.

(7) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(8) The disclosure is to comply with a judicial order or lawfully issued subpoena. The educational agency or institution may disclose information under this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(9) The disclosure is in connection with a health or safety emergency, under the conditions described in OAR 581-21-380.

(10) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in OAR 581-21-390.

(11) The disclosure is to the parent of a student who is not an eligible student or to an eligible student.

Stat. Auth.: HB 2062

OAR 581-21-350 Limitations on the Redisclosure of Information.

(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition

that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under this section may use the information, but only for the purposes for which the disclosure was made.

(2) Section (1) of this rule does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:

(a) The disclosures meet the requirements of OAR 581-21-340; and

(b) The educational agency or institution has complied with the requirements in OAR 581-21-400(2).

(3) Section (1) of this rule does not apply to disclosures of directory information under OAR 581-21-340(10) or to disclosures to a parent or student under OAR 581-21-340(11).

(4) Except for disclosures under OAR 581-21-340(10) and (11), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this rule.

Stat. Auth.: HB 2062

OAR 581-21-360 Conditions for the Disclosure of Information to Other Educational Agencies or Institutions.

(1) An educational agency or institution that discloses an education record under OAR 581-21-340(2) shall:

(a) Comply with the written policy requirements in OAR 581-21-250(1)(l) through (r);

(b) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(c) Give the parent or eligible student, upon request, an opportunity for a hearing.

(2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(a) The student is enrolled in or receives services from the other agency or institution; and

(b) The disclosure meets the requirements of section (1) of this rule.

Stat. Auth.: HB 2062

OAR 581-21-370 Conditions for the Disclosure of Information for Federal or State Program Purposes.

(1) The officials listed in OAR 581-21-340(3) shall have access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal or state legal requirements which relate to those programs.

(2) Information that is collected under section (1) of this rule must:

(a) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in section (1) of this rule; and

(b) Be destroyed when no longer needed for the purposes listed in section (1) of this rule.

(3) Section (2) of this rule does not apply if:

(a) The parent or eligible student has given written consent for the disclosure under OAR 581-21-330; or

(b) The collection of personally identifiable information is specifically authorized by state or federal law

Stat. Auth.: HB 2062

OAR 581-21-380 Conditions for the Disclosure of Information in Health and Safety Emergencies.

(1) An educational agency or institution shall disclose personally identifiable information from an education record to law enforcement, child protective services, and health care professionals, and other appropriate parties in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.

(2) As used in this rule, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 418.750 to 418.760.

(3) Sections (1) and (2) of this rule shall be strictly construed.

Stat. Auth.: HB 2062

OAR 581-21-390 Conditions for the Disclosure of Directory Information.

(1) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:

   (a) The types of personally identifiable information that the educational agency or institution has designated as directory information;

   (b) A parent or eligible student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and

(c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(2) An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

Stat. Auth.: HB 2062

OAR 581-21-400 Recordkeeping Requirements.

(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(a) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained;

(b) For each request or disclosure the record must include:

(A) The parties who have requested or received personally identifiable information from the education records,

(B) The date access was given, and

(C) The legitimate interests the parties had in requesting or obtaining the information.

(2) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under OAR 581-21-350(2), the record of disclosure required under this section must include:

(a) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(b) The legitimate interests under OAR 581-21-340 which each of the additional parties has in requesting or obtaining the information.

(3) The following parties may inspect the record relating to each student:

(a) The parent or eligible student;

(b) The school official or his or her assistants who are responsible for the custody of the records;

(c) Those parties authorized in OAR 581-21-340(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(4) Section (1) of this rule does not apply if the request was from or the disclosure was to:

(a) The parent or eligible student;

(b) A school official under OAR 581-21-340(1);

(c) A party with written consent from the parent or eligible student; or

(d) A party seeking directory information.

Stat. Auth.: HB 2062

OAR 581-21-410 Filing a Federal Complaint.

(1) A person may file a written complaint with the Family Policy Compliance Office, United States Department of Education, regarding an alleged violation under the Family Educational Rights and Privacy Act. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, DC 20202.

(2) A timely complaint under section (1) of this rule is defined as an allegation of a violation of the Family Educational Rights and Privacy Act that is submitted to the Family Policy Compliance Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(3) The Family Policy Compliance Office extends the time limit in section (2) of this rule if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Family Policy Compliance Office.

Stat. Auth.: HB 2062

OAR 581-21-420 Civil Action.

Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records, as prohibited by OARs 581-21-220 through 581-21-440, may file a civil action in circuit court pursuant to ORS 30.864.

Stat. Auth.: HB 2062

OAR 581-21-430 The Distribution of Rules Relating to Student Records.

(1) The State Board of Education shall distribute the administrative rules regarding student education records to all school districts.

(2) School districts shall make those rules available to the public schools in the district and to the public.

Stat. Auth.: HB 2062

OAR 581-21-440 Effective Date of Student Education Records Rules.

OAR 581-22-717 as amended and OARs 581-21-210 through 581-21-440 shall go into effect May 4, 1994.

Stat. Auth.: HB 2062

34 CFR 300.222 Full educational opportunity goal—timetable.

Each application must:

(a) Include a goal of providing full educational opportunity to all children with disabilities, aged birth through 21; and

(b) Include a detailed timetable for accomplishing the goal.

(Authority: 20 U.S.C. 1414(a)(1)(C), (D))

34 CFR 300.304 Full educational opportunity goal.

(a) Each SEA shall ensure that each public agency establishes and implements a goal of providing full educational opportunity to all children with disabilities in the area served by the public agency.

(b) Subject to the priority requirements of Secs. 300.320-300.324, an SEA or LEA may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: In meeting the full educational opportunity goal, the Congress also encouraged LEAs to include artistic and cultural activities in programs supported under this part, subject to the priority requirements of Secs. 300.320-300.324. This point is addressed in the following statements from the Senate Report on Public Law 94-142: The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.

NAL OPPORTUNITY GOAL

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBA and IGBA-AR.

I. Full Education Opportunity Goal

A. The school district has established a goal of providing full educational opportunity to each student with a disability, ages five through twenty-one years of age, regardless of the severity of the student's disability. (The State Department of Education fulfills the requirement of providing full educational opportunity for eligible children birth to school age.)

B. Implementation of the full educational opportunity goal for students with disabilities, ages five through twenty-one, will be completed by the school district in September of each school year. All federal and state regulations will be followed with this implementation.

   1. Special education services for students ages 19 through 21 are provided to eligible students who have not received a regular diploma.

   2. Special education services for students ages 19 through 21 are provided to eligible students who have received a regular diploma if the IEP team decides that the services will assist in achieving the student's IEP goals and objectives.

   3. Local school district application procedures apply to students addressed in (1) and (2) above.

   4. If an eligible student turns 21 during the school year, the student may complete that school year.

Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. Therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Authority: S. Rep. No. 94-168, p. 13 (1975))

34 CFR 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the SEA under Sec. 300.139.

(Authority: 20 U.S.C. 1414(a)(1)(C)(i))

34 CFR 300.139 Comprehensive system of personnel development.

Each State plan must include the procedures required under Secs. 300.380- 300.383.

(Authority: 20 U.S.C. 1413(a)(3))

34 CFR 300.380 General.

Each State shall:

(a) Develop and implement a comprehensive system of personnel development that:

  (1) Is consistent with the purposes of the Act and with the comprehensive system of personnel development described in 34 CFR Sec. 303.360;

  (2) Meets the requirements in Secs. 300.381-300.383; and

  (3) Is consistent with the provisions on personnel standards in Sec. 300.153; and

(b) Include in its State plan a description of the personnel development system required in paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1413 (a)(3), (a)(14))

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded GCL, GDL, IGBAC, and IGBAC-AR.

I. Personnel Development

A. Through 1994, the district shall have as its major priorities the areas of emphasis in the Department of Education's long range plan for special education which include:

1. Secondary education outcomes
2. Low incidence populations
3. Families
4. Supported education
5. Seriously emotionally disturbed
6. Talented and gifted
7. Early intervention

B. Input for staff development is obtained in the form of an annual needs assessment of personnel, from discussions at the building levels, and from the onsite monitoring reports of the Department of Education.

C. Needs are then compiled and communicated annually by the Special Education Director who is responsible for the development and implementation of staff development activities.

D. District staff are encouraged to be aware of significant information proven effective through research and demonstration or disseminated by the Department of Education.

34 CFR 300.381 Adequate supply of qualified personnel.

Each State plan must include a description of the procedures and activities the State will undertake to ensure an adequate supply of qualified personnel (as the term "qualified" is defined at Sec. 300.15), including special education and related services personnel and leadership personnel, necessary to carry out the purposes of this part. The procedures and activities must include the development, updating, and implementation of a plan that:

(a) Addresses current and projected special education and related services personnel needs, including the need for leadership personnel; and

(b) Coordinates and facilitates efforts among SEA and LEAs, institutions of higher education, and professional associations to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

(Authority: 20 U.S.C. 1413(a)(3)(A))

34 CFR 300.382 Personnel preparation and continuing education.

Each State plan must include a description of the procedures and activities the State will undertake to ensure that all personnel necessary to carry out this part are appropriately and adequately prepared. The procedures and activities must include:

(a) A system for the continuing education of regular and special education and related services personnel to enable these personnel to meet the needs of children with disabilities under this part;

(b) Procedures for acquiring and disseminating to teachers, administrators, and related services personnel significant knowledge derived from education research and other sources; and

E. Staff development activities include local, regional and statewide workshops; release time for visitation to other programs; regular meetings of instructional, related and support personnel relating to specific programming; and individual consultation with local or Department of Education personnel.

F. The district will provide incentives for personnel to enable them to participate in the inservice training and staff development activities such as release time, payment for participation, salary step credit, or updating professional skills.

G. The district shall encourage the use of innovative practices in the educational setting which have been found to be effective.

H. District personnel trained by inservice training and staff development activities include:

1. General instructional personnel;

2. Special educational instructional personnel;

3. Related services personnel;

4. Support personnel; and

5. Administrative personnel.

I. Other persons trained by inservice training and staff development activities include:

1. Parents;

2. Surrogate parents;

3. Volunteers; and

4. Other interested community persons, agencies and organizations (such as medical personnel, care providers, etc.).

(c) Procedures for adopting, if appropriate, promising practices, materials, and technology, proven effective through research and demonstration.

(Authority: 20 U.S.C. 1413(a)(3)(B))

34 CFR 300.383 Data system on personnel and personnel development.

(a) General. The procedures and activities required in Secs. 300.381 and 300.382 must include the development and maintenance of a system for determining, on an annual basis, the data required in paragraphs (b) and (c) of this section.

(b) Data on qualified personnel.

  (1) The system required by paragraph (a) of this section must enable each State to determine, on an annual basis:

    (i) The number and type of personnel, including leadership personnel, employed in the provision of special education and related services, by profession or discipline;

    (ii) The number and type of personnel who are employed with emergency, provisional, or temporary certification in each profession or discipline who do not hold appropriate State certification, licensure, or other credentials comparable to certification or licensure for that profession or discipline; and

    (iii) The number and type of personnel, including leadership personnel, in each profession or discipline needed, and a projection of the numbers of those personnel that will be needed in five years, based on projections of individuals to be served, retirement and other departures of personnel from the field, and other relevant factors.

  (2) The data on special education and related services personnel required in paragraph (b)(1) of this section must include

audiologists, counselors, diagnostic and evaluation personnel, home-hospital teachers, interpreters for students with hearing impairments including deafness, occupational therapists, physical education teachers, physical therapists, psychologists, rehabilitation counselors, social workers, speech-language pathologists, teacher aides, recreation and therapeutic recreation specialists, vocational education teachers, work-study coordinators, and other instructional and noninstructional staff.

(3) The data on leadership personnel required by paragraph (b)(1) of this section must include administrators and supervisors of State or local agencies who are involved in the provision or supervision of services or activities necessary to carry out the purposes of this part.

(c) Data on personnel development. The system required in paragraph (a) of this section must enable each State to determine, on an annual basis, the institutions of higher education within the State that are preparing special education and related services personnel, including leadership personnel, by area of specialization, including:

(1) The numbers of students enrolled in programs for the preparation of special education and related services personnel administered by these institutions of higher education; and

(2) The numbers of students who graduated during the past year with certification or licensure, or with credentials to qualify for certification or licensure, from programs for the preparation of special education and related services personnel administered by institutions of higher education.

(Authority: 20 U.S.C. 1413(a)(3)(A))

34 CFR 300.226 Parent involvement.

Each application must include procedures to ensure that, in meeting the goal under Sec. 300.222, the LEA makes provision for participation of and consultation with parents or guardians of children with disabilities.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iii))

ORS 343.293 Local advisory council on special education.

(1) Every school district, combination of districts or education service district that operates or plans to operate a program of special education under ORS 343.035 and 343.221 may appoint one or more local advisory councils consisting primarily of parents of children being served in special education programs.

(2) Each advisory council shall select its own chairman and vice chairman and fix the duties of its officers.

(3) Each local advisory council shall review all aspects of the special program and report to the district school board, or boards or to the education service district board. The local council shall also make recommendations to the Superintendent of Public Instruction as to appointments to the State Advisory Council for Special Education.

[Formerly 343.525; 1989 c.158 §3]

INVOLVEMENT

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAD and IGBAD-AR.

I. Parent Involvement in Policy Development

A. The school district consults with parents and solicits parent input in the development of district procedures to provide a full educational opportunity to students in special education.

B. The school district utilizes the advice of a special education advisory committee, of which at least one half of its members are parents, and facilitates regular meetings of that committee. The committee is utilized in the planning, development and evaluation of special education policies, procedures, programs and facilities.

34 CFR 300.227 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable, and consistent with Secs. 300.550-300.553, the LEA provides special services to enable children with disabilities to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for children with disabilities; and

(2) The number of children with disabilities within each disability category who are served in each type of placement.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iv))

34 CFR 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: The above list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

34 CFR 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is neces-

IN REGULAR EDUCATION

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAE and IGBAE-AR.

I. Participation

A. To the maximum extent appropriate, eligible students, including students in public or private educational agencies, shall be educated with noneligible students.

B. The provision of special classes, programs, separate schooling or other removal of eligible students shall occur only when the nature or severity of the disability is such that education in regular classes, with the use of supplemental aids and services, cannot be achieved satisfactorily.

II. Continuum of Alternative Placements

A. A continuum of alternative placements and service options are available to meet the needs of eligible students. The continuum includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

B. Provisions for supplementary services for regular class placement shall be made as follows:

1. Reviewing the goals and objectives;
2. Identifying what is necessary for implementation of the IEP;
3. Determining if the IEP can be implemented in the regular program without supplementary aids and services; and, if not, identifying and recording on the IEP the supplementary aids and services that are needed;

sary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

34 CFR 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

 (1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

 (2) Ensure that information obtained from all of these sources is documented and carefully considered;

 (3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

 (4) Ensure that the placement decision is made in conformity with the LRE rules in Secs. 300.550-300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Secs. 300.340-300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

4. If not, identifying and recording on the IEP those supplementary aids and services that are needed;

5. Identifying and recording on the IEP those supplementary aids and services that can be provided in the regular class;

6. If not all the aids and services can be provided in the regular classroom, defining and recording on the IEP those that must be provided outside the regular classroom; and

7. For those aids and services that must be provided outside the regular classroom, defining and recording on the IEP where, on the continuum from least to most restrictive, the services can be provided.

III. Placements

A. Each eligible student's placement is determined at least once every 365 days.

B. Each eligible student's placement is based on his/her individualized education program.

C. If a student's IEP requires a placement in a setting other than the school the student would attend if noneligible, the placement will be in a school as close to home as possible.

D. Various alternative placements following the continuum in II. A. of this section are available to implement the individualized education programs for eligible students.

E. Unless the individualized education program requires some other arrangement, the student is educated in the school he or she would attend if not eligible.

F. In selecting the placement, consideration is given to any potential harmful effect on the student or on the quality of services he/she needs.

Note: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

34 CFR 300.550 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of Secs. 300.550-300.556.

(b) Each public agency shall ensure:

(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

Sec. 300.551 Continuum of alternative placements.

(a) Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

IV. Nonacademic settings

A. Eligible students shall participate with noneligible students in nonacademic and extracurricular services and activities to the maximum extent appropriate to meet the needs of each student. These services and activities include:

1. Counseling services;
2. Health services;
3. Transportation;
4. Special interest groups or clubs;
5. Athletics;
6. Recreational activities;
7. Referrals to agencies which provide assistance to persons with disabilities; and
8. Employment of students.

(b) The continuum required in paragraph (a) of this section must:

   (1) Include the alternative placements listed in the definition of special education under Sec. 300.17 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

   (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

34 CFR 300.552 Placements.

Each public agency shall ensure that:

(a) The educational placement of each child with a disability:

   (1) Is determined at least annually;

   (2) Is based on his or her IEP; and

   (3) Is as close as possible to the child's home.

(b) The various alternative placements included at Sec. 300.551 are available to the extent necessary to implement the IEP for each child with a disability.

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.552 includes some of the main factors that must be considered in determining the extent to which a child with a disability can

be educated with children who are nondisabled. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to ensure that each child with a disability receives an education that is appropriate to his or her individual needs.

The requirements of Sec. 300.552, as well as the other requirements of Secs. 300.550-300.556, apply to all preschool children with disabilities who are entitled to receive FAPE. Public agencies that provide preschool programs for nondisabled preschool children must ensure that the requirements of Sec. 300.552(c) are met. Public agencies that do not operate programs for nondisabled preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the LRE embodied in Secs. 300.550-300.556. For these public agencies, some alternative methods for meeting the requirements of Secs. 300.550-300.556 include:

1. *Providing opportunities for the participation (even part-time) of preschool children with disabilities in other preschool programs operated by public agencies (such as Head Start);*

2. *Placing children with disabilities in private school programs for nondisabled preschool children or private school preschool programs that integrate children with disabilities and nondisabled children; and*

3. *Locating classes for preschool children with disabilities in regular elementary schools.*

In each case the public agency must ensure that each child's placement is in the LRE in which the unique needs of that child can be met, based upon the child's IEP, and meets all of the other requirements of Secs. 300.340-300.350 and Secs. 300.550-300.556.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR part 104—Appendix, Paragraph 24) includes several points regarding educational placements of children with disabilities that are pertinent to this section:

1. *With respect to determining proper placements, the analysis states:*

". . . it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs . . . ."

2. *With respect to placing a child with a disability in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parents' right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.*

34 CFR 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 300.306, each public agency shall ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Section 300.553 is taken from a requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[This paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR part 104—Appendix, Paragraph 24.)

34 CFR 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that Sec. 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

OAR 581-15-059 Requirement for Least Restrictive Environment.

School districts shall ensure that:

(1) To the maximum extent appropriate, handicapped children are educated with children who are not handicapped.

(2) Removal of handicapped children from the regular educational environment in any way occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-060 Alternative Placements and Supplementary Services.

School districts shall ensure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services, which continuum must:

(1) Include as alternative placements instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.

(2) Provide for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-061 Placement of the Child.

School districts shall ensure that:

(1) Each handicapped child's educational placement:

  (a) Is determined annually;

  (b) Is based on his or her individualized education program; and

  (c) Is as close as possible to the child's home.

(2) The alternative placements under OAR 581-15-060 are available to the extent necessary to implement the individualized education program for each handicapped child.

(3) Unless a handicapped child's individualized educational program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped.

(4) Consideration be given, in selecting the least restrictive environment, to any potential harmful effect on the child or on the quality of services which he or she needs.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-062 Nonacademic Settings.

School districts shall ensure that each handicapped child participates with nonhandicapped children to the maximum extent appropriate to the needs of that child, in nonacademic and extracurricular services and activities.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-073 Interpretation and Placement.

(1) In interpreting evaluation data and in making placement decisions, school districts shall:

  (a) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;

  (b) Ensure that information obtained from all these sources is documented and carefully considered; and

  (c) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options.

(2) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with OAR 581-15-068.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

Federal and State Legal Obligations

34 CFR 300.1 Purpose.

The purpose of this part is:

(a) To ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States and localities to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

34 CFR 300.130(a)–(b)(1) Individualized education programs.

(a) Each State plan must include information that shows that each public agency in the State maintains records of the IEP for each child with disabilities, and each public agency establishes, reviews, and revises each program as provided in Secs. 300.340-300.350.

(b) Each State plan must include:

  (1) A copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed, and revised.

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAF and IGBAF-AR.

I. When IEPs Must be in effect

A. The school district shall ensure that:

1. At the beginning of each school year an IEP shall be in effect for each eligible child;
2. The IEP shall be in effect before special education and related services are provided to a student; and
3. The IEP shall be implemented as soon as possible following the IEP meeting.

II. Meetings

A. The school district initiates and conducts IEP meetings for the purpose of developing, reviewing and revising an eligible student's IEP.

B. Meetings are conducted within 30 calendar days of determination that the student needs special education and related services.

C. Each eligible student's IEP is periodically reviewed. This is done at least once a year.

D. An IEP meeting is initiated for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the IEP, if a participating agency fails to provide agreed upon transition services contained in the IEP.

III. Participants in Meetings

A. Team members must include the following:

34 CFR 300.235 Individualized education programs.

Each application must include procedures to assure that the LEA complies with §§ 300.340–300.350.

[Authority: 20 U.S.C. 1414(a)(5)]

34 CFR 300.300 Timelines for free appropriate public education.

(a) General. Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) Age ranges 3-5 and 18-21. This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

Sample Procedures

1. A representative of the school district, other than the student's teacher, who is qualified to provide or supervise the provision of special education and is knowledgeable about program options, academic, nonacademic, and extracurricular activities. A representative of the district shall have the authority to commit district resources to ensure that whatever services are set out in the IEP can be delivered.

2. The student's current teacher, or if the student does not have a regular teacher, a teacher qualified to teach a student the same age.

3. One or both of the student's parents, guardian or persons in a parental relationship. Characteristics of a person in a parental relationship include the following:

   a. When the person has physical custody and control of the student;

   b. When the person supplies the student with food, clothing, shelter or other incidental necessities;

   c. When the person provides the student with care, education, and discipline; or

   d. When the person may authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the student and, in an emergency where the student's safety appears to urgently require it, the person may authorize surgery or other extraordinary care.

4. The student, when appropriate.

5. Other individuals at the discretion of the parent or district.

6. For a student who has been evaluated for the first time, a member of the evaluation team or some other person who

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

(ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) Children aged 3 through 21 on reservations. With the exception of children identified in Sec. 300.709(a)(1) and (2), the SEA shall be responsible for ensuring that all of the requirements of Part B of the Act are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1411(f); 1412(2)(B); S. Rep. No. 94-168, p. 19 (1975))

Note 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under Sec. 300.300 and who need special education and related services. This includes children with disabilities already in school and children with less severe disabilities, who are not covered under the priorities under Sec. 300.321.

Note 2: In order to be in compliance with Sec. 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Secs. 300.530-300.533. If, as a result of the evaluation, it is determined that a child needs special education and related services, an is knowledgeable about the evaluation procedures used and familiar with the evaluation results.

7. If the purpose of the IEP meeting includes the consideration of transition services, the school district will invite (1) the student, and (2) a representative of any other agency that is likely to be responsible for providing or paying for transition services.

8. If the school district has referred or placed a student in an ESD, State Operated Program, private facility, or any other program, the school district must take steps and document those steps that a representative from those agencies participates in any IEP meetings. Participation may consist of attending the meeting or a conference call.

IV. Parent Participation

A. The school district makes sure that parents participate in IEP meetings by:

1. Notifying parents of the meeting a minimum of seven days before it is to take place. This does not restrict a meeting taking place during those seven days if agreeable to all parties. The notice shall inform participants of the purpose of the meeting, the time, who will be in attendance, and the location.

2. Scheduling mutually agreed upon time and place.

3. If the purpose of the meeting is the consideration of transition services for a student, the notice must also indicate this purpose, indicate that the district is inviting the student, and identify any other agency that is invited to send a representative.

B. The school district uses other methods to ensure parent participation such as individual or conference telephone calls.

IEP must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

Note 3: The requirement to identify, locate, and evaluate children with disabilities (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to ensure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under Sec. 300.300, the State may, at its discretion, extend services to those children, subject to the priority requirements of Secs. 300.320-300.324.

34 CFR 300.340 Definitions.

(a) As used in this part, the term "individualized education program" means a written statement for a child with a disability that is developed and implemented in accordance with Secs. 300.341-300.350.

(b) As used in Secs. 300.346 and 300.347, "participating agency" means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(Authority: 20 U.S.C. 1401(a)(20))

C. The school district may conduct an IEP meeting without the parent if the district is unable to convince the parents to attend. In this case, the district develops a record of its attempts to arrange a mutually agreed upon time and place such as:

   1. Detailed records of phone calls made or attempted;

   2. Copies of correspondence sent and any responses received; and

   3. Detailed records of visits made to the parents' home or place of employment.

D. The school district arranges for interpreters as needed and takes any action necessary to ensure that the parent understands the proceedings at a meeting.

E. The school district provides the parent a copy of the IEP upon request.

F. If the purpose of an IEP meeting is the consideration of transition services and (1) the student does not attend, the school district will take other steps to ensure that the student's preferences and interests are considered, or (2) if the representative of an invited agency does not attend, the school district will take other steps to obtain the participation of the other agencies in the planning of any transition services.

V. Content of the IEP

A. The team must develop an IEP for each eligible student that contains the following components:

   1. A statement of present level of performance that is individualized for each student.

      a. The statement shall accurately describe the student's abilities and the effects of his/her performance on any area of education that is affected, including academic

34 CFR 300.341 State educational agency responsibility.

(a) Public agencies. The SEA shall ensure that each public agency develops and implements an IEP for each of its children with disabilities.

(b) Private schools and facilities. The SEA shall ensure that an IEP is developed and implemented for each child with a disability who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial school or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412 (4), (6); 1413(a)(4))

Note: This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare) that provide special education to a child with a disability either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a child with a disability, that agency would be responsible for ensuring that an IEP is developed for the child.

34 CFR 300.342 When individualized education programs must be in effect.

(a) At the beginning of each school year, each public agency shall have in effect an IEP for every child with a disability who is receiving special education from that agency.

(b) An IEP must:

(1) Be in effect before special education and related services are provided to a child; and

and nonacademic areas (e.g., social-emotional, general intelligence, academic performance, communicative status, vocational attitude, or motor abilities). Labels such as "mentally retarded" or "deaf" cannot be used as a substitute for the description of the present levels of educational performance;

b. The present level shall describe the results of any tests administered and the results from nontest-based evaluations, and progress on the previous IEP;

c. The present level of performance shall be clearly linked to the other components of the annual goals and objectives;

d. The statement should be written in easy to understand language.

2. Annual goals are based on the needs identified in the present level of performance and evaluation data and are expressed in terms of:

   a. What the student can be expected to accomplish within a 12-month period of time as a result of special education;

   b. Skills that reflect what the student is to learn;

   c. Goals which are clearly linked to the statement in the present level of performance;

   d. Development and maintenance of skills leading to growth in personal independence, self-sufficiency, and social integration and participation when completion of the regular academic program is not ultimately anticipated;

   e. Anticipated outcomes for participation in extracurricular/nonacademic activities, which require specially designed instruction or modifications;

(2) Be implemented as soon as possible following the meetings under Sec. 300.343.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, sec. 8(c) (1975))

Note: Under paragraph (b)(2) of this section, it is expected that the IEP of a child with a disability will be implemented immediately following the meetings under Sec. 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

34 CFR 300.343 Meetings.

(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability (or, if consistent with State policy and at the discretion of the LEA, and with the concurrence of the parents, an individualized family service plan described in section 677(d) of the Act for each child with a disability, aged 3 through 5).

(b) [Reserved]

(c) Timeline. A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services.

(d) Review. Each public agency shall initiate and conduct meetings to review each child's IEP periodically and, if appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Note: The date on which agencies must have IEPs in effect is specified in Sec. 300.342 (the beginning of each school year). However, except for new children with disabilities (i.e., those evaluated and determined to need

   f. For secondary age students, entry into competitive employment, vocational education or supported employment when entry into higher education is not anticipated.

3. Short-term instructional objectives are measurable intermediate steps for each annual goal expressed in terms of:

   a. Anticipated outcomes or improvements toward meeting each annual goal;

   b. Measurable intermediate steps between the present level of performance and the annual goals that have been established;

   c. A logical breakdown of the major components of the annual goals and serve as "milestones" for indicating progress toward meeting the goals;

   d. Measurable indicators to determine the annual progress (criteria);

   e. A statement of how often the student's progress will be reviewed during the annual IEP (schedule); and

   f. A statement of the methods and procedures used to measure the annual progress toward the short-term objectives (evaluation procedures).

4. A description of special education and related services to be provided in support for each identified goal and short-term objective and the extent to which the child will be able to participate in regular education programs.

5. A statement as to the initiation and anticipated duration of special education to be provided.

6. A description of curricular or instructional approaches, or modifications that are necessary for the student to participate in the regular education program.

special education and related services for the first time), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect at the beginning of the school year, agencies could hold meetings either at the end of the preceding school year or during the summer prior to the next school year. Meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review and, if appropriate, revise each child's IEP. The timing of those meetings could be on the anniversary date of the child's last IEP meeting, but this is left to the discretion of the agency.

34 CFR 300.344 Participants in meetings.

(a) General. The public agency shall ensure that each meeting includes the following participants:

  (1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

  (2) The child's teacher.

  (3) One or both of the child's parents, subject to Sec. 300.345.

  (4) The child, if appropriate.

  (5) Other individuals at the discretion of the parent or agency.

(b) Evaluation personnel. For a child with a disability who has been evaluated for the first time, the public agency shall ensure:

  (1) That a member of the evaluation team participates in the meeting; or

  (2) That the representative of the public agency, the child's

7. The identification of whether the service will be provided directly or through a consultative delivery approach.

8. The amount of time committed for each special education service.

9. The amount of time spent in the regular education program described by the hours per week spent in the program or the percentage of time per week spent in the program.

10. Consideration of the need for extended school year programming.

11. A statement of the needed transition services for students beginning no later than age 16 (and at a younger age, if appropriate) and annually thereafter and a statement of each participating agency's responsibilities, or linkages, or both, before the student leaves the school setting. If the team determines that transition services are not needed in the areas of instruction, community experiences, and the development of employment and other post-school adult living objectives, the IEP shall include a statement to that effect and the basis upon which the determination was made.

VI. Placement in Another Public Agency for Services

A. Upon determining that a student, whether disabled or not, will attend another district for his or her education, the resident district will initiate a contract with the district or agency which the student will attend. Attending districts or agencies with which a contract will be initiated include:

1. another school district,

2. an ESD when the student is enrolled for the majority of his or her education program with the ESD and/or is served outside the district attendance area,

teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(c) Transition services participants.

(1) If a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite:

(i) The student; and

(ii) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

(2) If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered; and

(3) If an agency invited to send a representative to a meeting does not do so, the public agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(Authority: 20 U.S.C. 1401(a)(19), (a)(20); 1412(2)(B), (4), (6); 1414(a)(5))

Note 1: In deciding which teacher will participate in meetings on a child's IEP, the agency may wish to consider the following possibilities: (a) For a child with a disability who is receiving special education, the teacher could be the child's special education teacher. If the child's disability is a speech impairment, the teacher could be the speech-language pathologist. (b) For a child with a disability who is being considered for placement in special education, the teacher could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both. (c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability. For a child whose primary disability is a speech or language impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

3. the Oregon School for the Deaf or the Oregon School for the Blind,

4. a regional program when the student is enrolled for the majority of his or her education with the regional program and/or is served outside the district attendance area.

B. The signed contract will stipulate the role and responsibilities for the resident district and attending district or agency as follows.

   1. Resident districts shall stipulate through the agreement that:

      a. The resident district shall retain all responsibility for ensuring that the parents and the child are afforded all special education rights and procedural safeguards under federal and state law, including;

         (1) Childfind, the evaluation for eligibility, for special education if the resident district suspects that a child has a disability and needs special education;

         (2) Individualized education program (IEP). The attending district may initiate and conduct IEP meetings for the review of an IEP if requested to do so in writing by the resident district. A representative of the resident district shall attend all IEP meetings;

         (3) Educational placement of the child;

         (4) Provision of Free, Appropriate Public Education;

         (5) Prior written notice to the parents when the resident district proposes or refuses to initiate the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education including change in placement if the contract is rescinded;

Note 2: Under paragraph (c) of this section, the public agency is required to invite each student to participate in his or her IEP meeting, if a purpose of the meeting is the consideration of transition services for the student. For all students who are 16 years of age or older, one of the purposes of the annual meeting will always be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at a meeting that does not include the student, the public agency is responsible for ensuring that, before a decision about transition services for the student is made, a subsequent IEP meeting is conducted for that purpose, and the student is invited to the meeting.

34 CFR 300.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including:

  (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

  (2) Scheduling the meeting at a mutually agreed on time and place.

(b) (1) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance;

  (2) If a purpose of the meeting is the consideration of transition services for a student, the notice must also:

    (i) Indicate this purpose;

    (ii) Indicate that the agency will invite the student; and

    (iii) Identify any other agency that will be invited to send a representative.

(6) Stay-put which allows the child to remain in his or her present educational placement at the attending district during the pendency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.

(7) The resident district shall be the school district of record for any special education due process hearing or judicial proceeding arising out of the child's placement or program.

2. The attending district shall stipulate through the agreement that:

a. Allow the child to remain in his or her present educational placement at the attending district during the pendency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.

b. Immediately notify the resident district if the attending district suspects that the child may have a disability and may need special education services.

c. Immediately notify the resident district if the child, whether he or she is a special education student or not, has engaged in conduct that may lead to suspension or expulsion.

d. Immediately notify the resident district of any complaint made by the parents of the child regarding the child's regular or special education program at the attending district.

VII. Private School Placements

A. In developing IEPs for students placed by the school district in private schools, the district follows these procedures:

1. Before the student is placed, the district initiates and conducts a meeting to develop an IEP;

(c) If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

  (1) Detailed records of telephone calls made or attempted and the results of those calls;

  (2) Copies of correspondence sent to the parents and any responses received; and

  (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the IEP.

(Authority: 20 U.S.C. 1401(a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note: The notice in paragraph (a) of this section could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c) of this section, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

34 CFR 300.346 Content of individualized education program.

(a) General. The IEP for each child must include:

2. The district ensures that a representative of the private school being considered as a placement option attends the meeting. If this isn't possible, the district shall use other methods to ensure participation by the private school, including individual or conference calls;

3. For any student placed before the effective date of PL 94-142, the school district will make sure that an IEP is in place.

B. In reviewing IEPs for students placed by the school district in private schools, the district follows these procedures:

1. Any meetings to review and revise the IEP after the student is enrolled may be initiated and conducted by the private school at the discretion of the district.

2. If the private school initiates and conducts the meetings, the district will ensure that the parents and a district representative:

   a. Are involved in any decision about the student's IEP; and

   b. Agree to any proposed changes in the program before those changes are implemented.

C. In developing and reviewing IEPs for students placed by the district in private schools, the district takes responsibility for compliance with federal regulations.

VIII. Students With Disabilities in Parochial or Other Private Schools

A. If a student is enrolled in a parochial or other private school and receives special education from the school district, the district:

1. Initiates and conducts meetings to develop, review, and revise an IEP in accordance with 34 CFR 300.343; and

(1) A statement of the child's present levels of educational performance;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;

(4) The projected dates for initiation of services and the anticipated duration of the services; and

(5) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(b) Transition services.

(1) The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in Sec. 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

(2) If the IEP team determines that services are not needed in one or more of the areas specified in Sec. 300.18 (b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made.

(Authority: 20 U.S.C. 1401 (a)(19), (a)(20); 1412 (2)(B), (4), (6); 1414(a)(5))

Note 1: The legislative history of the transition services provisions of the Act suggests that the statement of needed transition services referred to in paragraph (b) of this section should include a commitment by any participating agency to meet any financial responsibility it may have in the provision of transition services. See House Report No. 101-544, p. 11 (1990).

2. Ensures a representative of the private school attends the meetings. If this isn't possible, the district shall use other methods to ensure participation by the private school, including individual or conference calls.

IX. Extended School Year (ESY) Services

A. ESY services are considered by the IEP team if the issue is raised by school personnel or the parent of an eligible student.

B. ESY services are determined by the IEP team and all procedural safeguards pertaining to IEP development and meetings apply. Recommendation can be made by the student's MDT.

C. The IEP team considers:

   1. Documented evidence of the student's regression and recoupment of skills which resulted from an interruption in the instructional program;

   2. Predictors of future regression and recoupment, if there is no evidence;

   3. All areas of need including those essential for minimal independence, academics, areas necessary for community living, and needed related services; and

   4. All eligible students, and not only those with severe or profound disabilities.

D. The IEP team's decisions about the type and amount of services are based on the individual student needs and not on the services that are available.

E. The consideration of ESY and the ESY services that are provided to eligible students are documented on the IEP or on another form attached to the IEP.

F. If a parent requests that ESY services be considered and the IEP team determines that ESY services are not needed, written prior notice is given to the parent.

Note 2: With respect to the provisions of paragraph (b) of this section, it is generally expected that the statement of needed transition services will include the areas listed in Sec. 300.18 (b)(2)(i) through (b)(2)(iii). If the IEP team determines that services are not needed in one of those areas, the public agency must implement the requirements in paragraph (b)(2) of this section. Since it is a part of the IEP, the IEP team must reconsider its determination at least annually.

Note 3: Section 602(a)(20) of the Act provides that IEPs must include a statement of needed transition services for students beginning no later than age 16, but permits transition services to students below age 16 (i.e., ". . . and, when determined appropriate for the individual, beginning at age 14 or younger"). Although the statute does not mandate transition services for all students beginning at age 14 or younger, the provision of these services could have a significantly positive effect on the employment and independent living outcomes for many of these students in the future, especially for students who are likely to drop out before age 16. With respect to the provision of transition services to students below age 16, the Report of the House Committee on Education and Labor on Public Law 101-476 includes the following statement:

Although this language leaves the final determination of when to initiate transition services for students under age 16 to the IEP process, it nevertheless makes clear that Congress expects consideration to be given to the need for transition services for some students by age 14 or younger. The Committee encourages that approach because of their concern that age 16 may be too late for many students, particularly those at risk of dropping out of school and those with the most severe disabilities. Even for those students who stay in school until age 18, many will need more than two years of transitional services. Students with disabilities are now dropping out of school before age 16, feeling that the education system has little to offer them. Initiating services at a younger age will be critical. (House Report No. 101-544, 10 (1990).)

34 CFR 300.347 Agency responsibilities for transition services.

(a) If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the

public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

(b) Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

(Authority: 20 U.S.C. 1401 (a)(18), (a)(19), (a)(20); 1412(2)(B))

Oregon Policy as Per Attorneys' General Office

(a) A resident district may contract with another school district as the attending district to provide special education and related services to resident children.

(b) A resident district may contract with another school district to act as the attending district for students who may or may not be identified as eligible for special education and related services at the time of the agreement.

(c) For the purposes of these policies and procedures, school districts, corrections programs and contractors for Early Intervention/Early Childhood Special Education are considered resident districts. School districts, ESDs, the School for the Deaf and the School for the Blind may function as attending districts.

(d) For both of the cases (a) and (b) above, the resident district and the attending district shall enter into a contractual agreement with the following provisions.

 (1) Resident districts shall stipulate through the agreement that:

  (a) The resident district shall retain all responsibility for ensuring that the parents and the child are afforded all special education rights and procedural safeguards under federal and state law, including:

Sample Procedures

(1) Childfind, the evaluation for eligibility, for special education if the resident district suspects that a child has a disability and needs special education;

(2) Individualized education program (IEP). The attending district may initiate and conduct IEP meetings for the review of an IEP if requested to do so in writing by the resident district. A representative of the resident district shall attend all IEP meetings;

(3) Educational placement of the child;

(4) Provision of Free, Appropriate Public Education;

(5) Prior written notice to the parents when the resident district proposes or refuses to initiate the identification, evaluation, or educational placement of the child or the provision of a free, appropriate public education including change in placement if the contract is rescinded;

(6) Stay-put which allows the child to remain in his or her present educational placement at the attending district during the pendency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.

(7) The resident district shall be the school district of record for any special education due process hearing or judicial proceeding arising out of the child's placement or program.

2. The attending district shall stipulate through the agreement that:

(a) Allow the child to remain in his or her present educational placement at the attending district during the penency of any education due process or judicial proceeding unless the resident district and the parents of the child agree otherwise.

(b) Immediately notify the resident district if the attending district suspects that the child may have a disability and may need special education services.

(c) Immediately notify the resident district if the child, whether he or she is a special education student or not, has engaged in conduct that may lead to suspension or expulsion.

(d) Immediately notify the resident district of any complaint made by the parents of the child regarding the child's regular or special education program at the attending district.

34 CFR 300.348 Private school placements by public agencies.

(a) Developing individualized education programs.

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the child in accordance with Sec. 300.343.

(2) The agency shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(3) [Reserved]

(b) Reviewing and revising individualized education programs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and

an agency representative:

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.

(Authority: 20 U.S.C. 1413(a)(4)(B))

OAR 581-15-064 Effective Dates of Individualized Education Program.

(1) On October 1, 1977, and at the beginning of each school year thereafter, school districts shall have an individualized education program for each handicapped child who is receiving special education from the district.

(2) An individualized education program must:

(a) Be written before special education is provided to a child; and

(b) Be implemented as soon as possible following the meetings held under OAR 581-15-065.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-065 Meetings to Develop Individualized Education Program.

(1) School districts shall initiate and conduct meetings for the purpose of developing, reviewing and revising a handicapped child's individualized education program:

(a) For children whom the agency has already determined will receive special education during the 1977-78 school year, early enough to ensure that an individualized educational program is developed by October 1, 1977; and

(b) For all other handicapped children, within 30 calendar days of a determination that the child needs special education.

(2) School districts shall initiate and conduct meetings to review and revise as appropriate each child's individualized educational program at least once a year.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-066 Participants in Meetings.

School districts shall ensure that each meeting includes the following participants:

(1) The child's teacher (the teacher of child receiving special education is the child's special education teacher or speech-language pathologist, the teacher of a child being considered for placement in special education is the child's regular teacher or a teacher qualified in the program in which the child may be placed and the teacher of a child not in school or who has more than one teacher is a teacher designated by the school district);

(2) A representative of the school district, other than the child's teacher, who is qualified to provide, or supervise the provision of special education;

(3) One or both of the child's parents except as provided in OAR 581-15-067;

(4) The child where appropriate;

(5) For a child with a disability who has been evaluated for the first time, a member of the evaluation team or some other person who is

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knowledgeable about the evaluation procedures used and familiar with the results of the evaluation procedures used;

(6) Other individuals at the discretion of a parent or the school district; and

(7) Transition services participants:

  (a) If a purpose of the meeting is the consideration of transition services for a student, the school district shall invite:

    (A) The student; and

    (B) A representative of any other agency that is likely to be responsible for providing or paying for transition services.

  (b) If the student does not attend the meeting, the school district shall take other steps to ensure that the student's preferences and interests are considered; and

  (c) If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the other agency in the planning of any transition services.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-067 Parental Participation.

(1) School districts shall take steps to ensure that one or both parents are at the meeting provided by OAR 581-15-066 or have an opportunity to participate, including scheduling the meeting at a mutually agreed upon time and place and providing parents with a written notice of the meeting sufficiently in advance to ensure that they will have an opportunity to attend. The written notice shall state the purpose, time and place of the meeting and who will attend. The school district shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including

arranging for an interpreter for parents who are deaf or whose native language is other than English:

(a) If neither parent can attend, the school district shall use other methods to ensure parent participation, including, but not limited to, individual or conference phone calls or home visits;

(b) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents to attend, in which case the school district must have a detailed record of its attempts to arrange a mutually agreed on time and place.

(2) If a purpose of the meeting is to consider transition services for a student, the notice must also:

(a) Indicate this purpose;

(b) Indicate that the school district will invite the student; and

(c) Identify any other agency that will be invited to send a representative.

(3) Upon request, the school district shall give the parent a copy of the individualized education program.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-068 Content of Individual Education Program.

(1) The individualized education program shall include:

(a) A statement of the child's present levels of educational performance.

(b) A statement of annual goals, including short-term instructional objectives.

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs.

(d) The projected dates for initiation of services and the anticipated duration of the services.

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(2) The individualized education program for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in OAR 581-15-005(25), including, if appropriate, a statement of the school district's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. If the individualized education program team determines that services are not needed in the areas of instruction, community experiences, and the development of employment and other postschool adult living objectives, the individualized education program must include a statement to that effect and the basis upon which the determination was made.

Stat. Auth.: ORS 343.045, 343.055 & 343.195
Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-146 Private Educational Agencies; Individualized Education Program.

(1) Before a school district places a handicapped child in or refers such a child to a private educational agency, the school district shall initiate and conduct a meeting to develop an individualized education program for the child under OAR 581-15-065.

(2) The school district shall ensure that a representative of the private educational agency attends the meeting. If the representative cannot attend, the school district shall use other methods to ensure

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participation by the private educational agency, including individual or conference telephone calls.

(3) The school district shall develop an individualized education program for each handicapped child who was placed in a private educational agency by a public agency prior to the effective date of this rule.

(4) After a handicapped child enters a private educational agency, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private educational agency at the discretion of the school district.

(5) If the private educational agency initiates and conducts such meetings, the school district shall ensure that the parents and an appropriate school district representative:

(a) Are involved in any decision about the child's individualized education program; and

(b) Agree to any proposed changes in the program before those changes are implemented.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

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34 CFR 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the SEA that the LEA has procedural safeguards that meet the requirements of Secs. 300.500- 300.515.

(Authority: 20 U.S.C. 1414(a)(7))

34 CFR 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of Secs. 300.562-300.569, an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child; and

(b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

34 CFR 300.503 Independent educational evaluation.

(a) General.

  (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

  (2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

  (3) For the purposes of this part:

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAG and IGBAG-AR.

I. Opportunity to Examine Records

A. The school district will inform parents of their right to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the student, and the provision of a free appropriate public education.

II. Independent Educational Evaluation

A. Parents have a right to request an independent evaluation of their child, at school district expense, when they disagree with an evaluation obtained by the school district. The request should be documented in writing.

B. The district will provide a list of independent educational evaluators to the parent upon request.

C. If a parent requests an independent educational evaluation and the school district disagrees with the parent's request, the district may request a due process hearing to show that the district's evaluation is appropriate.

D. If the hearings officer's decision is that the district's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at the district's expense.

E. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

1. Must be considered by the school district in any decision made with respect to the provision of a free appropriate public education to the student; and

2. May be presented as evidence at a due process hearing.

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.301.

(b) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under Sec. 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearings officers. If a hearings officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

F. A hearings officer may request that an independent evaluation be conducted as a part of the hearing, and the school district shall pay the cost of the evaluation.

G. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation.

III. Prior Notice and Parent Consent

A. The school district will provide written notice to the parents of students with disabilities a minimum of seven days before the school district:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student; or

2. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. Parental consent will be obtained before:

1. Conducting a preplacement evaluation;

2. Initial placement of a student with a disability in a program providing special education and related services; or

3. The administration of individual intelligence tests and all tests of personality to the student.

C. Except for preplacement evaluation and initial placement, parent consent may not be required as a condition of any benefit to the student.

34 CFR 300.504 Prior notice; parent consent.

(a) Notice. Written notice that meets the requirements of Sec. 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Consent; procedures if a parent refuses consent.

(1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a child with a disability in a program providing special education and related services.

(2) If State law requires parental consent before a child with a disability is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(3) If there is no State law requiring consent before a child with a disability is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in Secs. 300.506-300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent. If it does so and the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under Secs. 300.510-300.513.

D. The school district may use the state due process hearings procedures to determine if a student may be evaluated or initially provided special education and related services when parental consent is not granted.

IV. Content of Notice

A. The notice will include:

1. A full explanation of all of the procedural safeguards available to the parents under Subpart E of EHA-B and IDEA (the district may use the sample "Parental Rights in Special Education" brochure published by ODE);

2. A description of the action proposed or refused by the district, an explanation of why the agency proposes or refuses to take the action, and a description of any options the district considered and the reasons why those options were rejected;

3. A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

4. A description of any other factors which are relevant to the district's proposal or refusal.

B. The notice will be:

1. Written in language understandable to the general public; and

2. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

C. If the native language or other mode of communication of the parent is not a written language, the district will take steps to see that:

(c) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(d) Limitation. A public agency may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required under paragraphs (b) or (c) of this section.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D); 1412(2), (6))

Note 1: Any changes in a child's special education program after the initial placement are not subject to the parental consent requirements in paragraph (b)(1) of this section, but are subject to the prior notice requirement in paragraph (a) of this section and the IEP requirements of Secs. 300.340-300.350.

Note 2: Paragraph (b)(2) of this section means that if State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures of Secs. 300.506-300.508 to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

Note 3: If a State adopts a consent requirement in addition to those described in paragraph (b) of this section and consent is refused, paragraph (d) of this section requires that the public agency must nevertheless provide the services and activities that are not in dispute. For example, if a State requires parental consent to the provision of all services identified in an IEP and the parent refuses to consent to physical therapy services

1. The notice is translated orally or by other means to the parent in his/her native language or other mode of communication;

2. The parent understands the content of the notice; and

3. There is written evidence that the requirements in C. 1 & 2 of this section have been met.

V. Impartial Due Process Hearing

A. A parent or the school district may initiate a hearing relevant to the proposal or refusal to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student.

B. A written request for a due process hearing must be submitted to the State Superintendent of Public Instruction, Oregon Department of Education, 255 Capitol Street NE, Salem, Oregon 97310-0203. If the parent files a request for a due process hearing with the district, the district will forward the request to the State Superintendent of Public Instruction.

C. When the parent requests the information or if a due process hearing is initiated, the school district shall advise the parents of any free or low cost legal and other relevant services available in the area.

VI. Hearing Rights

A. Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.

2. Present evidence and confront, cross-examine and compel the attendance of witnesses.

included in the IEP, the agency is not relieved of its obligation to implement those portions of the IEP to which the parent consents.

If the parent refuses to consent and the public agency determines that the service or activity in dispute is necessary to provide FAPE to the child, paragraph (c) of this section requires that the agency must implement its procedures to override the refusal. This section does not preclude the agency from reconsidering its proposal if it believes that circumstances warrant.

34 CFR 300.505 Content of notice.

(a) The notice under Sec. 300.504 must include:

 (1) A full explanation of all of the procedural safeguards available to the parents under Sec. 300.500, Secs. 300.502-300.515, and Secs. 300.562-300.569;

 (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

 (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

 (4) A description of any other factors that are relevant to the agency's proposal or refusal.

(b) The notice must be:

 (1) Written in language understandable to the general public; and

 (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

4. Obtain a free written or electronic verbatim record of the hearing at the discretion of the school district.

5. Obtain written findings of fact and decisions. The Oregon Department of Education shall transmit those findings and decisions, after deleting any personally identifiable information, to the State Advisory Council for Special Education.

B. Parents involved in hearings will be given notice of the right to:

1. Have the student who is the subject of the hearing present; and

2. Open the hearing to the public.

VII. Hearing Decision and Appeal

A. A decision made in a hearing is final, unless a party to the hearing appeals the decision under 34 CFR 300.510 or 300.511 or ORS 343.175.

B. The school district or any part aggrieved by the findings and decision made in a hearing, has the right to bring civil action in any state or federal court.

C. Within 45 days of the date for a request for a hearing, a final decision shall be reached and a copy of the decision mailed to each party, unless a hearings officer grants a specific extension.

D. Any state court civil action under ORS 343.175 shall be commended within 120 days of the date of the hearings officer's final order.

(c) If the native language or other mode of communication of the parent is not a written language, the SEA or LEA shall take steps to ensure:

  (1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

  (2) That the parent understands the content of the notice; and

  (3) That there is written evidence that the requirements in paragraphs (c)(1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

34 CFR 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Sec. 300.504(a)(1) and (2).

(b) The hearing must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

  (1) The parent requests the information; or

  (2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1415(b)(2))

Note: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of children with disabilities, and the provision of FAPE to those children. Mediations

VIII. Surrogate Parents

A. If, after attempts have been made to find the parents, a guardian, or a person acting in a parental relationship with the student, no such person has been found, or if the student is a ward of the State, the Special Education Director appoints a surrogate parent for the student.

B. The Special Education Director may appoint a surrogate parent at the written request of a parent if a parent does not wish to participate, circumstances clearly make it not feasible for the parent to participate in protecting the special education rights of the child, or the parent lives at such a distance from the child's educational placement that it is not practicable to participate in protecting the special education rights of the child.

   1. If a parent gives written consent for a surrogate to be appointed, the parent may revoke the consent at any time by providing a written request to the school district.

   2. When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-15-067(1) and 581-15-075 and all of the information provided to the surrogate. The surrogate, alone, is responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment.

C. The school district will determine that a surrogate parent is needed for a child when the conditions in VIII. A. of this section are met.

D. The assigning of a surrogate will be made as follows:

   1. The Special Education Director or designee shall maintain a list of individuals with the knowledge and skills necessary to effectively represent a student who is, or might be, eligible for special education throughout the educational decision-making process.

have been conducted by members of SEAs or LEA personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under Secs. 300.500-300.515.

34 CFR 300.507 Impartial hearings officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearings officer.

(c) Each public agency shall keep a list of the persons who serve as hearings officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

34 CFR 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses.

2. The list shall include information about each individual's current and previous employment, current and previous experience regarding students who are, or might be, eligible for special education (e.g., the individual has served as a surrogate for other students, or the individual has had specific expertise in special education or related fields), and any information regarding possible conflict of interest (e.g., participation in organizations, relatives employed by a district involved in education or care of the student).

3. The Special Education Director or designee shall select from the list an individual who meets the qualifications for being a surrogate parent.

E. A person is qualified to serve as a surrogate parent if the Special Education Director determines that the surrogate parent possesses or can acquire the necessary knowledge and skills to adequately represent the student.

F. In selecting the surrogate parent, the Director shall not select any person from the list who:

1. Has interests which are in conflict with the interests of the student;

2. Is employed by any agency involved in the care or education of the student;

3. Is employed solely to serve as a surrogate parent;

4. Is assigned as the student's guardian because of the position he holds with the State, or an employee who exercises the rights of a guardian as a part of his/her job with the State; or

5. Is a foster parent currently serving as a custodian of the student unless the foster parent meets all of the standards set forth above (a foster parent is not necessarily precluded from acting as a surrogate merely because he/she is a foster parent and receives payments from CSD).

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing.

(4) Obtain a written or electronic verbatim record of the hearing.

(5) Obtain written findings of fact and decisions. The public agency, after deleting any personally identifiable information, shall:

(i) Transmit those findings and decisions to the State advisory panel established under Sec. 300.650; and

(ii) Make those findings and decisions available to the public.

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

34 CFR 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under Sec. 300.506 is final, unless a party to the hearing appeals the decision under Sec. 300.510 or Sec. 300.511.

(Authority: 20 U.S.C. 1415(c))

34 CFR 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

G. A conflict of interest exists for a person under consideration as a surrogate parent if:

   1. The person might benefit personally or professionally from decisions regarding the student; or

   2. The person may be required to make decisions regarding the student which might affect policy in which the individual has a personal or professional interest.

H. Upon reaching a determination that the individual selected from the list for consideration meets the criteria, the Special Education Director immediately makes the appointment. The Director or designee shall provide written notice of appointment to the individual so selected and shall record such appointment in the student'record.

I. During his or her appointment, a surrogate parent must exercise all of the rights, responsibilities and authorities of a parent, including:

   1. The right to represent the student in all matters relating to the identification, evaluation, and educational placement of the student, and the provision of a free appropriate public education, including the right to request a due process hearing;

   2. The right to receive notice of actions proposed by the district;

   3. The right to provide or withhold consent requested by the district;

   4. The right to participate in the development, review and revision of the IEP and in the formulation of placement recommendations;

   5. All aspects of the protection of the confidentiality of personally identifiable information collected, used or maintained by the district; and

(b) If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall:

  (1) Examine the entire hearing record.

  (2) Ensure that the procedures at the hearing were consistent with the requirements of due process.

  (3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 300.508 apply.

  (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.

  (5) Make an independent decision on completion of the review.

  (6) Give a copy of written findings and the decision to the parties.

(c) The SEA, after deleting any personally identifiable information, shall:

  (1) Transmit the findings and decisions referred to in paragraph (b)(6) of this section to the State advisory panel established under Sec. 300.650; and

  (2) Make those findings and decisions available to the public.

(d) The decision made by the reviewing official is final unless a party brings a civil action under Sec. 300.511.

(Authority: 20 U.S.C. 1415(c), (d); H. R. Rep. No. 94-664, at p. 49 (1975))

Note 1: The SEA may conduct its review either directly or through another State agency acting on its behalf. However, the SEA remains responsible for the final decision on review.

Note 2: All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing

6. The right to request an independent educational evaluation of the student.

J. The appointment of a surrogate parent may be terminated by the district if:

   1. The natural or adoptive parent, guardian, or a person acting as a parent of a student has been located;

   2. The surrogate parent no longer meets the standards for a "qualified" surrogate parent set forth above and, thus, such termination is necessary to protect the rights of the student; or

   3. The student is no longer a ward of the State.

K. The district will provide training in the following areas:

   1. The role of the surrogate parent;

   2. The rights and responsibilities of parents in the educational decision-making process;

   3. The procedure which a surrogate parent follows if the surrogate parent believes that circumstances regarding the surrogate parent's role may create a conflict with the interest of the student, including the procedure for immediately notifying the Director if such a potential conflict exists; and

   4. Information necessary to adequately represent the student (e.g., how to access records, how to request meetings, types and characteristics of disabilities).

IX. Mediation

A. Mediation may be requested from the Department when:

   1. Attempts to resolve the special education dispute between the district and a parent have reached an impasse;

official decides to hold a hearing to receive additional evidence, the other rights in Sec. 300.508 relating to hearings also apply.

34 CFR 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under Sec. 300.510, and any party aggrieved by the decision of a reviewing officer under Sec. 300.510, has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

34 CFR 300.512 Timelines and convenience of hearings and reviews.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing:

  (1) A final decision is reached in the hearing; and

  (2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review:

  (1) A final decision is reached in the review; and

  (2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

2. The conflict is recognized by both parties, but the process or method to resolve it locally is unknown; or

3. A due process hearing has been requested by either party.

B. Once the parents and school district agree to mediate, the school district shall contact the Department and request the appointment of a mediator. (Parents and school districts are free to select their own source of mediation other than the Department's mediation services.)

C. Mediation is at no cost to the parents and is to be paid by the school district.

D. Mediation can occur prior to a hearing, but cannot delay or deny the parent's right to a hearing and adherence to the prescribed timelines agreed upon by the parent.

E. Mediation sessions are usually scheduled within 15 calendar days of the mediation request.

F. If mediation is successful, the outcome will be a written agreement, which may be in the format of a proposed IEP for the student.

G. The mediator assists the parties in developing alternatives to help reconcile their differences in the dispute.

X. Right to File a Complaint

The school district shall inform parents of their right to file a written complaint with the State Superintendent of Public Instruction if the parent believes the school district has violated a federal law in how it has educated their student.

34 CFR 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Note: Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

34 CFR 300.514 Surrogate parents.

(a) General. Each public agency shall ensure that the rights of a child are protected when:

  (1) No parent (as defined in Sec. 300.13) can be identified;

  (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

  (3) The child is a ward of the State under the laws of that State.

(b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method:

  (1) For determining whether a child needs a surrogate parent, and

  (2) For assigning a surrogate parent to the child.

(c) Criteria for selection of surrogates.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) Non-employee requirement; compensation.

(1) A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) Responsibilities. The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

ORS 343.155 Procedures relating to rights.

The State Board of Education shall establish by rule procedures to protect the rights of every child with a disability who is eligible for special

education and every child who there is a reasonable cause to believe has a disability, including:

(1) Rules governing the procedures for the appointment of a surrogate for the parent and other rules necessary to protect the special educational rights of the child, which shall include, but need not be limited to, rules applicable whenever no parent of the child can be identified or located after reasonable efforts or when there is reasonable cause to believe that the child has a disability and is a ward of the state.

(2) Rules prescribing hearings procedures if identification, evaluation, individual education program or placement is contested.

[1979 c.423 §3 (enacted in lieu of 343.077); 1989 c.491 §34; 1991 c.795 §3]

ORS 343.165 Procedure if parent does not consent or contests evaluation or placement; hearing.

(1) If the parent withholds or refuses consent for the preplacement evaluation or initial placement of a child with a disability, the school district shall follow procedures prescribed in rules of the State Board of Education when consent is not obtained.

(2) A hearing shall be conducted pursuant to rules of the State Board of Education if the parent requests a hearing and:

  (a) Contests the determination of the school district concerning the identification, evaluation or educational placement of the child; or

  (b) Claims that the result of the determination of the district is to deny the child a free appropriate public education.

(3) The board's rules in subsection (2) of this section shall be as consistent as possible with the procedures applicable to a contested case under ORS 183.310 to 183.550. However, the board's rules shall prohibit the introduction of any evidence at the hearing that has not been disclosed to both parties at least five days before the hearing.

The parent shall be entitled to have the child who is the subject of the hearing present at the hearing and to have the hearing open to the public.

(4) The school district may also commence the contested case proceedings to obtain a decision regarding whether its identification, evaluation or educational placement of the child is appropriate or whether the result of the determination of the district is to provide the child with free appropriate public education. The State Board of Education shall adopt rules that establish when a school district is obligated to initiate a contested case hearing to ensure that a student with disabilities is provided a free appropriate public education.

(5) The hearing shall be conducted by an independent hearing officer appointed by the Superintendent of Public Instruction. The hearing officer shall not be:

(a) An employee of a school district involved in the education of the child;

(b) An employee of the Department of Education; or

(c) A person having any personal or professional interest which would conflict with the person's objectivity in the hearing.

[1979 c.423 §6 (enacted in lieu of 343.077); 1989 c.252 §1; 1989 c.491 §35; 1991 c.795 §5; 1993 c.45 §206; 1993 c.749 §8]

OAR 581-01-010 Procedures for Complaints as Required by Specific Federal Programs.

(1) An organization or individual may file with the State Superintendent of Public Instruction a written, signed complaint that the Department of Education, or a subgrantee, including but not limited to a regional program, an education service district or a local education agency is violating a federal statute or regulation that applies to an educational program. The Department will investigate and resolve only those issues that arise under a federal statute or federal

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regulation which contains a provision that a state must have a written complaint procedure. If a complaint alleges violations of federal statues or federal regulations not having such a provision, the complainant shall be informed of alternative procedures that are available to address the complainant's allegations.

(2) The complaint must include the facts on which the complaint is based. If the facts as alleged by the complainant constitute a violation of federal law, the Superintendent shall resolve the matter within 60 days of receipt of the complaint:

  (a) The Superintendent shall send a copy of the complaint to the responsible division within the state department, local educational agency or subgrantee and request it to respond to the allegations. The Superintendent may also initiate attempts to resolve the complaint through mediation;

  (b) The respondent shall furnish any information or documents requested by the Superintendent.

(3) The respondent shall submit its response and requested documents within ten days of its receipt of the complaint from the Superintendent. Under exceptional circumstances, the Superintendent may extend the time for responding to the complaint beyond ten days.

(4) The Superintendent shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(5) The Superintendent shall investigate the allegations of the complaint to the extent necessary to resolve the matter and at the Superintendent's discretion may:

  (a) Conduct an on-site investigation; and

  (b) Conduct interviews and review documents as deemed necessary.

(6) The Superintendent shall issue a written decision that addresses each allegation in the complaint and contains findings of fact, conclusions, and reasons for the Department's final decision. Unless

an extension has been granted, the decision shall be issued within 60 days of receipt of the complaint.

(7) Only under exceptional circumstances may the Superintendent extend the time for issuing a written decision under section (6) of this rule.

(8) If a violation is found, the Superintendent's written decision shall include any necessary corrective action to be undertaken as well as any documentation to be supplied by any party to ensure that the corrective action has occurred.

(9) The Superintendent shall inform the respondent and the complaining party of the right to request the United State Secretary of Education to review the final decision.

(10) Corrective action ordered by the Superintendent shall be taken within 30 days of the date of the decision, or at a later date in accordance with the terms established by the Department on a case-by-case basis.

(11) At any time during the pendency of the complaint, if the Superintendent determines that there is a strong likelihood that the respondent has significantly breached federal law and that delay may cause irreparable harm, the Superintendent may order interim relief.

(12) The Superintendent may delay the investigation of a complaint under this rule if a due process hearing on the same issues is pending or filed as provided in OAR 581-15-081 or 581-15-109.

(13) If the respondent refuses to voluntarily comply with a plan of correction when so ordered, the Superintendent may do any of the following:

(a) Disapprove, or fail to approve in whole or part, the respondent's application for federal funding;

(b) Withhold or terminate further assistance to the respondent for an approved project;

(c) Suspend payments, under an approved project, to a respondent;

(d) Order, in accordance with a final state audit resolution determination, the repayment of misspent federal funds; and

(e) Withhold all or part of a district's basic school support in accordance with ORS 327.103.

(14) Before the Superintendent denies or withholds funding or orders reimbursement as provided in section (13) of this rule, the Superintendent shall notify the respondent of its right to request a hearing in accordance with ORS 183.415:

(a) The hearing request must be made to the Superintendent within 30 days of receiving notice;

(b) The Superintendent shall appoint a hearings officer who will conduct the hearing in accordance with ORS 183.413 to 183.470;

(c) The burden of proof at the hearing is on the Department;

(d) The Superintendent's decision shall be final, subject to appeal to the United States Secretary of Education or the Oregon Court of Appeals.

(15) No person shall suffer retaliation or discrimination for having filed or participated in this complaint procedure. Any person who believes that she or he has suffered retaliation or discrimination may file a complaint under this rule with the Superintendent.

Stat. Auth.: ORS 326.310, 343.055 & 343.155
Hist.: 1EB 28-1980, f. & ef. 12-23-80; EB 26-1987(Temp), f. & ef. 11-17-87; EB 22-1988, f. & cert. ef. 5-24-88; EB 32-1988, f. & cert. ef. 8-3-88; EB 44-1990, f. & cert. ef. 9-12-90; EB 35-1992(Temp), f. & cert. ef. 11-24-92; EB 8-1993, f. & cert. ef. 3-25-93

OAR 581-15-039 Parental Consent.

(1) Written parental consent shall be obtained before a child who may be disabled is given a preplacement evaluation, and before such child is initially placed in a special education program unless the

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evaluation or placement has been determined by a final order under OAR 581-15-088 to be appropriate without parental consent.

(2) Written parental consent shall also be obtained before administering individual intelligence tests (as opposed to group intelligence tests) and all tests of personality to a child pursuant to OAR 581-21-030(2)(a).

(3) If a parent of a child who has been identified as having a disability or who is suspected of having a disability refuses to grant consent in the circumstances identified in sections (1) and (2) of this rule, school districts must allow the procedures set forth in OAR 581-15-081(2) and (3).

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 37-1978, f. & ef. 10-5-78; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-075 Prior Notice Required for Identification, Evaluation, or Placement.

(1) Written prior notice shall be given to the parent, substitute care provider, or state agency which has legal guardianship of a child, within a reasonable period of time before a school district proposes to initiate or change, or refuses to initiate or change, the identification, preplacement or annual evaluation, individualized educational plan, educational placement of the child, or the provision of a free appropriate public education to the child.

(2) Content of the written prior notice shall include:

- (a) A description of the action proposed or refused by the school district;
- (b) An explanation of why the district proposed or refused to take the action;
- (c) A description of any options which the school district considered and reasons why those options were rejected;

(d) A description of each evaluation procedure, test, record, or report which is directly relevant to the proposal or refusal;

(e) A description of any other factors which are relevant to the school district's proposal or refusal; and

(f) A description of all of the procedural safeguards available to the parent which include the right to:

  (A) Inspect and review all educational records with respect to the identification, preplacement or annual evaluation, individualized educational plan and educational placement of the child, and the provision of a free appropriate public education to the child;

  (B) A response from the participating agency to reasonable requests for explanations and interpretations of the child's records;

  (C) Request that the school district provide copies of the records at a reasonable cost unless the fee would effectively prevent the parent from exercising the right to inspect and review the records in which case the copies shall be provided without cost to the parent;

  (D) Have a representative of the parent inspect and review the records;

  (E) Obtain an independent educational evaluation of the child pursuant to OAR 581-15-094;

  (F) Request from the school district information about where an independent educational evaluation may be obtained;

  (G) Refuse consent for preplacement evaluation;

  (H) Refuse consent for initial placement of the handicapped child in a program providing special education and related services;

(I) Initiate an impartial due process hearing related to a proposal or refusal to initiate or change the identification, preplacement or annual evaluation, individualized educational plan or educational placement of the child, or the provision of a free appropriate public education to the child. The notice shall state that if the parent desires a hearing she/he must file a written request with the Superintendent at 700 Pringle Parkway S.E., Salem, OR 97310;

(J) Be informed of any free or low-cost legal and other relevant services available in the area and that the parent may seek an award of attorneys fees if she/he prevails;

(K) Request a list of the types and locations of educational records collected, maintained, or used by the school district;

(L) Request amendment of the child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If the school district refuses this request for amendment, it shall notify the parent within a reasonable time, not to exceed 30 days, and advise the parent of the parent's right to a hearing;

(M) Request a hearing to challenge information in the child's educational records to ensure that they are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child;

(N) Refuse consent for the disclosure of personally identifiable information related to the child to anyone other than school officials or person acting in an official capacity for the school district collecting or using the information;

(O) Refuse consent for the use of personally identifiable information related to the child for any purpose other than the identification, preplacement or annual evaluation, individualized educational plan or educational placement of the child, or the provision of a free appropriate public education to the child; and

(P) Request the destruction of personally identifiable information collected, maintained, or used by the school district when it is determined by the school district to be no longer needed to provide educational services to the child under the provisions of this rule. However, the required contents of the permanent record must be retained in accordance with the provisions of OAR 581-22-258.

(3) The prior notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(b) A reasonable effort is made to aid the parent in understanding the content of the notice; and

(c) There is written evidence that the requirements in subsections (4)(a) and (b) of this rule have been met.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. &cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90

OAR 581-15-080 Notice of Hearing and Hearing Rights.

(1) Upon receipt of a written request by a parent, or the school district for a hearing regarding the identification, preplacement or annual evaluation, individualized educational plan, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent shall appoint a hearing officer, in

accordance with OAR 581-15-096, to conduct the hearing. The hearings officer shall provide a notice to the parties of the hearing. The notice shall be served by registered or certified mail.

(2) Content of the notice shall include:

(a) A statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) A statement that, during the pendency of any administrative or judicial proceeding, the child shall remain in the present educational placement unless the school district and the parent agree otherwise for the provision of appropriate educational services. If applying for initial admission to a public school the child, with consent of the parent, shall be placed in a program provided or selected by the district at the district's expense until all proceedings are completed;

(f) A statement that any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of handicapped children. The notice shall advise the parent to contact the district for information regarding any free or low-cost legal and other relevant services available in the area and that the parent may seek an attorneys fees award if she/he prevails;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Obtain a written or electronic verbatim record of the hearing pursuant to OAR 581-15-092; and

(D) Obtain a copy of the hearing decision.

(g) A statement that the parent involved in a hearing must be given the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

(3) The notice must be:

(a) Written in language understandable to the general public; and

(b) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(4) If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure that:

(a) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(b) A reasonable effort is made to aid the parent in understanding the content of the notice; and

(c) There is written evidence that the requirements in subsections (4)(a) and (b) of this rule have been met.

Stat. Auth.: ORS 343.045, 343.055 & 343.155
Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 29-1989(Temp), f. &cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92

OAR 581-15-081 When Hearing May be Requested.

(1) A parent may request a hearing when he or she does not agree with the identification, evaluation, educational placement of a child, or the provision of a free appropriate education to a child who may be disabled.

(2) A school district may, but is not obligated to, request a hearing when a parent refuses to give consent for a preplacement evaluation and before a student is initially placed in a special education program.

(3) For a child who is currently receiving special education services, a school district shall implement procedures, including obtaining either a court order or requesting a due process hearing, to override a parent's refusal to give consent for the administration of an individual intelligence test or a test of personality, or refusal to cooperate in any activity deemed necessary by the school district to provide the child with a free appropriate public education if informal means, such as parent conferences or mediation, proved unsuccessful. If a school district reconsiders and determines, based upon a review of the information provided by the parents or after reconsideration of its evaluation data or new information, that the current requested activity is not necessary to provide the student with a free appropriate public education, the school district is not obligated to initiate procedures to override the parent's lack of consent or cooperation.

(4) When a parent requests an independent educational evaluation or reimbursement for an independent educational evaluation, a school district shall either pay for the independent educational evaluation, or if the school district believes that its evaluation is appropriate, it shall request a due process hearing.

(5) The hearings officer shall require the parties to appear in person or by telephone for a prehearing conference for the purpose of identifying the issues to be resolved, establishing the length of the hearing, and reviewing the parties' hearing rights and procedures. The hearings officer shall notify the parties of the availability of mediation services through the Oregon Department of Education. Participation in mediation shall be voluntary.

(6) The school district shall inform a parent of any free or low-cost legal services available in the area if:

(a) A parent requests the information; or

(b) A parent or the school district initiates a hearing under this rule.

(7) The Department shall supply districts with a list of free or low-cost legal services.

Stat. Auth.: ORS 343.045, 343.055 & 343.155
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-084 Failure to Appear at a Hearing.

(1) When a parent, having requested a hearing, fails to appear at the specified time and place, the hearing officer shall enter a decision which supports the school district action.

(2) The decision supporting the school district action shall set forth the material on which the action is based, or the material shall be attached to and made a part of the decision.

Stat. Auth.: ORS Ch. 183 & 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80

OAR 581-15-085 Subpoenas and Depositions.

(1) Subject to section (2) of this rule a hearing officer may upon request by either party issue subpoenas to compel the attendance of witnesses.

(2) Before issuing subpoenas to the requesting party, the hearing officer may require a showing of need, general relevancy and the evidence to be given by the witness to be within the reasonable scope of the proceedings.

(3) On petition of any party, the hearing officer may order the testimony of any material witness to be taken by deposition in the manner prescribed by ORS Chapter 45 for depositions in civil cases. The petition shall include:

(a) The name and address of the witness whose testimony is desired;

(b) A showing of materiality of the testimony; and

(c) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(4) If the hearing officer issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the hearing officer may issue a subpoena as provided in section (1) of this rule requiring the witness's appearance before the officer taking the deposition.

(5) Any witness appearing pursuant to subpoena, other than parties or officers or employees of the school district, shall be tendered fees and mileage as prescribed by law in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the fees and mileage to the witness.

Stat. Auth.: ORS Ch. 183 & 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80

OAR 581-15-086 Conduct of Hearing.

(1) The hearing shall be conducted by and shall be under the control of the hearings officer appointed under OAR 581-15-080.

(2) At the discretion of the hearings officer, the hearing shall be conducted in the following manner:

(a) Statement and evidence of the school district in support of its action;

(b) Statement and evidence of the parents disputing the school district action;

(c) Rebuttal testimony.

(3) The hearings officer, counsel or other representatives of the parties, and the parents if the parents are not represented, shall have the right to question or cross-examine any witnesses.

(4) The hearing may be continued with recesses as determined by the hearings officer.

(5) The hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(6) Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Superintendent as part of the record of the proceedings.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. 12-22-77, ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90

OAR 581-15-087 Evidence.

(1) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible, except written evidence which has not been disclosed to both parties at least five days before the hearing.

(2) Upon objection by a party the hearing officer may exclude evidence which the hearing officer finds to be irrelevant, immaterial, or unduly repetitious.

(3) Evidence objected to may be received by the hearing officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

Stat. Auth.: ORS Ch. 183 & 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 17-1990, f. &cert. ef. 4-5-90

OAR 581-15-088 Decision of Hearings Officer.

(1) The decision of the hearing officer in a contested case shall be made pursuant to ORS 343.167.

(2) The decision shall be entered not later than 45 days after the request for hearing is filed unless an extension has been granted by the hearing officer at the request of a party.

(3) A copy of the hearing decision shall be sent to the parent and school district accompanied by a statement describing the method of appealing the decision.

(4) The hearings officer shall submit a copy of the hearing decision to the State Advisory Council for Special Education.

(5) The hearings officer shall write the hearing decision in such a manner so that personally identifiable information shall not be disclosed. Students shall be referred to by initials only and no parent names shall be used.

(6) The hearing decision shall be made available to the public.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 9-1993, f. & cert. ef. 3-25-93

OAR 581-15-091 Informal Disposition.

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents that is used by school districts with regard to identification, evaluation or educational placement of a handicapped child. Such conferences or consultations, however, shall not be held in lieu of a hearing requested under OAR 581-15-081 if one is requested, but a request for a hearing shall not preclude informal disposition of the matter by stipulation, agreed settlement or consent order.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77

OAR 581-15-092 Right to Record of Hearing.

Upon request parties have the right to obtain a written or electronic verbatim recording of the hearing. A district has the option to choose

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whether the recording will be in either written or electronic form. If a parent or a parent's representative requests a recording, it shall be provided by the district at no cost.

Stat. Auth.: ORS Ch. 183, 343.045, 343.055 & 343.155
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1978(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 2-1990, f. & cert. ef. 1-26-90; EB 9-1992, f. & cert. ef. 4-7-92

OAR 581-15-093 Hearing Costs.

The school district shall reimburse the Department for the hearings officer's costs for conducting the hearing and the cost of any written or electronic verbatim recording of the hearing.

Stat. Auth.: ORS 343.045, 343.055 & 343.155
Hist.: EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB9-1992, f. & cert. ef. 4-7-92

OAR 581-15-094 Independent Educational Evaluation.

(1) If a parent disagrees with an evaluation obtained by the district under OAR 581-15-071 or 581-15-074, the parent may request an independent evaluation at the expense of the district by a qualified examiner who is not employed by the school district responsible for the child.

(2) If the district disagrees with the parent's request for an independent evaluation, the district may request a hearing under ORS 343.165 and OAR 581-15-081 to show that the evaluation conducted by the district is appropriate. If the final decision of the hearings officer is that the district's evaluation is appropriate, the parent has the right to an independent educational evaluation, but not at the district's expense.

(3) The results of an independent educational evaluation:

  (a) Shall be communicated promptly to the school district;

  (b) Shall be considered by the school district with regard to any further action taken concerning the child; and

(c) May be presented as evidence at a subsequent hearing regarding placement of the child.

(4) Whether an independent educational evaluation is requested or not, the parent shall be given an opportunity to examine all records with respect to the identification, preplacement or annual evaluation, individualized educational plan and educational placement of the child.

(5) The school district shall maintain a list of public and private agencies from which an independent educational evaluation may be obtained and shall furnish the list to parents upon request.

(6) A hearings officer in any proceeding under ORS 343.165(5) may request an independent evaluation as a part of the hearing, and the school district shall pay the cost of the evaluation.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90

OAR 581-15-096 Criteria for Impartial Hearings Officers.

(1) A hearings officer appointed to conduct a hearing regarding the identification, evaluation, individualized educational plan, educational placement of a child, or the provision of a free appropriate education to a child who may be handicapped shall:

(a) Not be employed by a public agency responsible for the education or care of the child; and

(b) Not have a professional or personal interest which would conflict with his or her objectivity in the hearing.

(2) Hearings officers shall be selected from persons who have:

(a) Completed workshops for hearings officers sponsored by the Department of Education, the Oregon State Board of Education, or the Oregon Association of Administrative Law Judges;

(b) Completed continuing legal education courses covering issues involved in the hearing; or

(c) Had experience handling hearings of an equivalent complexity.

(3) The Oregon Department of Education shall keep a list of the persons serving as hearings officers which shall include a statement of the qualifications of each of those individuals.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 269, f. & ef. 12-22-77; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90

OAR 581-15-099 Surrogate Parents.

(1) As defined in ORS 343.153 each school district shall ensure that the rights of a child are protected when:

(a) The parent, as defined in OAR 581-15-005(13), cannot be identified or located after reasonable efforts; or

(b) The child is a ward of the state and there is reasonable cause to believe that the child has a disability.

(2) In determining the need for a surrogate, the school district shall consider whether it is likely to take any action regarding the child which would require notice under OAR 581-15-075 to the parents, substitute care provider, or state agency which has legal guardianship of the child.

(3) Each school district shall secure nominations of persons to serve as surrogates. The nominees must be approved by the school district which shall use criteria for selection of a surrogate that ensures that each nominee:

(a) Is not an employee of the Oregon Department of Education;

(b) Is not an employee of a public agency involved in the education or care of the child;

(c) Is free of any conflict of interest that would interfere with representing the child's special education interests; or

(d) Has or can acquire the necessary knowledge and skills to represent the parent to protect the special education rights of the child.

(4) An appointed surrogate parent shall be given written prior notice by the school district of any proposal to initiate or change, or refusal to initiate or change the identification, preplacement or annual evaluation, individualized educational plan, educational placement of the child, or the provision of a free appropriate public education to the child.

(5) A surrogate shall not be considered an employee of a school district solely on the basis that the surrogate is compensated from public funds.

(6) The duties of the surrogate parent are to:

(a) Protect the special education rights of the child;

(b) Be acquainted with the child's handicap and the child's special education needs;

(c) Represent the child in all matters relating to the identification, preplacement or annual evaluation, individualized educational plan and educational placement of the child; and

(d) Represent the child in all matters relating to the provision of a free appropriate public education to the child.

(7) A surrogate shall have the same rights granted to a parent in a hearing under OAR 581-15-080 if the identification, evaluation, individual education program or placement of the child is contested, and the procedures regarding hearings set forth in OAR 581-15-081 through 581-15-091 shall apply.

(8) A parent may give written consent for a surrogate to be appointed when:

(a) A parent does not wish to participate or circumstances clearly make it not feasible for the parent to participate in protecting the special education rights of the child; or

(b) The parent lives at such a distance from the child's educational placement that it is not practicable to participate in protecting the special education rights of the child.

(9) When a parent requests that a surrogate be appointed, the parent retains all parental rights to receive notice under OAR 581-15-067(1) and 581-15-075 and all of the information provided to the surrogate. The surrogate, alone, will be responsible for all matters relating to the special education of the child unless the parent revokes consent for the surrogate's appointment pursuant to section (10) of this rule.

(10) If a parent gives written consent for a surrogate to be appointed under section (8) of this rule, the parent may revoke consent at any time by providing a written request to revoke the surrogate's appointment.

(11) The district may change or terminate the appointment of a surrogate when:

(a) The person appointed as surrogate is no longer willing to serve;

(b) The child reaches 21 years of age or the child's elementary/secondary schooling is terminated;

(c) The child is no longer eligible for special education services;

(d) The legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;

(e) The parent, who previously could not be identified or located, is now identified or located; or

(f) The appointed surrogate is no longer eligible.

(12) A person appointed as surrogate shall not be held liable for actions taken in good faith on behalf of the parent in protecting the special education rights of the child.

(13) The school district shall not appoint a surrogate when the parent is uncooperative or unresponsive to the special education needs of the child.

Stat. Auth.: ORS 343.045, 343.055 & 343.155
Hist.: 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; EB 9-1992, f. & cert. ef. 4-7-92

OAR 581-21-030 Limitation on Administration and Utilization of Tests in Public Schools.

(1) Tests shall be considered as instruments that are means to assist decision-making on the part of parents, the public, school boards and the professional staff, rather than ends unto themselves. Tests may be used as follows in addition to other uses specified in local policies:

(a) To assist in making decisions about the effectiveness of school programs;

(b) To assist in determining the attainment of specified educational outcomes;

(c) To provide information to the students about themselves, to parents, and to the school staff which may assist them in making programmatic decisions of benefit to the student.

(2) Tests of intelligence, ability, achievement or aptitude shall not be used as sole criterion for placement of students in educational groups or tracks:

(a) Before administering individual intelligence tests (as opposed to group intelligence tests) and all tests of personality to children in public schools, districts shall inform parents as to the purpose of testing; and the parents' written permission shall be obtained. In homes where the predominant language spoken is not En-

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glish, the communications on the purpose of testing should be in the language spoken in the home;

(b) When a school district believes it is not feasible to comply with subsection (2)(a) of this rule, it may petition the Department of Education for a waiver in accordance with the procedure contained in the State Standards for Oregon Public Schools.

Stat. Auth.: ORS Ch. 326 & 336
Hist.: 1EB 141, f. 10-5-72, ef. 10-15-72; 1EB 173, f. 7-1-74, ef. 9-1-74; 1EB 226, f. & ef. 6-4-76; 1EB 16-1982, f. 8-4-82, ef. 8-5-82

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34 CFR 300.530 General.

(a) Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of Secs. 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

34 CFR 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Sec. 300.532.

(Authority: 20 U.S.C. 1412(5)(C))

34 CFR 300.532 Evaluation procedures.

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

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NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAH and IGBAH-AR.

I. Preplacement Evaluation

A. Before any action is taken with respect to the initial placement into special education, a full and individual evaluation of the student's educational needs must be conducted.

II. Evaluation Procedures

A. All tests and other evaluation instruments used by the school district must be:

1. Written and/or administered in the native language or conducted in the mode of communication most familiar to the person being evaluated, unless it is clearly not feasible to do so;

2. Validated for the specific purpose(s) for which they are used and administered by trained personnel in conformance with instructions provided by their producer;

3. Tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

4. Selected to ensure that when a test is administered to a student with impaired sensory, manual or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect the student's impaired sensory, manual or speaking skills;

5. Appropriate for the age and stage of development of each student to whom they are administered; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

Note: Children who have a speech or language impairment as their primary disability may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would: (1) Evaluate each child with a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments, and (2) if necessary, make referrals for additional assessments needed to make an appropriate placement decision.

6. Free of racial, cultural, language or gender bias.

B. When evaluating a student, no single procedure will be used as the sole criterion for determining an appropriate educational program for the student.

C. The evaluation for each student is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the suspected disability.

D. For each student suspected of having a disability, the district will assess in all areas related to the suspected disability, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

E. In evaluating a student suspected of having a specific learning disability, the multidisciplinary team will also include the student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age and at least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

III. Placement Procedures

A. In interpreting evaluation data and in making placement decisions, the multidisciplinary team will:

1. Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;

2. Ensure that information obtained from all these sources is documented and carefully considered;

34 CFR 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the LRE rules in Secs. 300.550-300.554.

(b) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with Secs. 300.340-300.350.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Note: Paragraph (a)(1) of this section includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to ensure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other children with disabilities, such as a child who has a severe articulation impairment as his primary disability. For such a child, the speech-language pathologist, in complying with the multiple source requirement, might use: (1) A standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

3. Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and

4. Ensure that the placement decision is made in conformity with the least restrictive environment rules in 34 CFR 300.550-.554.

B. If the district determines that a student has a disability and needs special education and related services, an individualized education program will be developed for the student.

IV. Reevaluation

A. Each eligible student's IEP is reviewed annually.

B. A reevaluation of each eligible student is conducted every three years or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation..

34 CFR 300.534 Reevaluation.

Each SEA and LEA shall ensure:

(a) That the IEP of each child with a disability is reviewed in accordance with Secs. 300.340-300.350; and

(b) That an evaluation of the child, based on procedures that meet the requirements of Sec. 300.532, is conducted every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

Additional Procedures for Evaluating Children With Specific Learning Disabilities

34 CFR 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of Sec. 300.532, each public agency shall include on the multidisciplinary evaluation team:

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

34 CFR 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

  (1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

  (2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

    (i) Oral expression;

    (ii) Listening comprehension;

    (iii) Written expression;

    (iv) Basic reading skill;

    (v) Reading comprehension;

    (vi) Mathematics calculation; or

    (vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

  (1) A visual, hearing, or motor impairment;

  (2) Mental retardation;

  (3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

34 CFR 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

34 CFR 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

OAR 581-15-072 Evaluation Procedures.

School districts shall ensure that:

(1) Procedures and tests and other evaluation materials used for evaluating children with disabilities:

(a) Are selected and administered so as not to be racially or culturally discriminatory;

(b) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(c) Have been validated for the specific purpose for which they are used; and

(d) Are administered by trained personnel in conformance with the instructions provided by their producer.

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(3) Tests are selected and administered so as best to assure that, when a test is administered to a child with impaired sensory, manual or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever factors the test purports to

measure rather than reflecting the child's impaired skills, except where those skills are the factors which the test purports to measure.

(4) No single procedure is used as the sole criterion for determining an appropriate educational program for the child.

(5) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability; and

(6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.

Stat. Auth.: ORS 343.045 & 343.155
Hist.: 1EB 269, f. & ef. 12-22-77; 1EB 20-1978, f. 6-19-78, ef. 6-20-78; EB 2-1993, f. & cert. ef. 1-13-93

OAR 581-15-005 Definitions.

The following definitions apply to OAR 581-15-015 through 581-15-296, unless the context requires otherwise:

(1) "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes the activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

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(2) "Decision" means the decision of the hearing officer which shall be final, unless appealed to a state or federal court of competent jurisdiction.

(3) "Determination" means the determination by the school district concerning the identification, preplacement or other evaluation, individualized education program or placement of a child with a disability in a program paid for by the district.

(4) "Evaluation" means procedures used to ascertain the aptitude and achievement of the child, as well as to determine whether the child is disabled, and the nature and extent of the special education that the child needs. The term refers to procedures used selectively with the individual child and does not include basic tests administered to or procedures used with all children in school, grade, or class.

(5) "Children with Disabilities" includes children who require special education in order to obtain the education of which they are capable, because of mental, physical, emotional or learning problems. These groups include, but are not limited to, those categories that traditionally have been designated: Mental retardation, hearing impairment, including, hard of hearing and deafness, deaf/blind, speech or language impairments, visual impairments, serious emotional disturbances, orthopedic or other health impairments, autism, traumatic brain injury, and specific learning disabilities:

(a) "Autism" means a developmental disability typically affecting the processing, integrating, and organizing of information that significantly impacts communication, social interaction, functional skills, and educational performance. Essential features, generally appearing during the first three years, may include:

(A) Inconsistencies or discrepancies in the development of physical, language, social, or cognitive skills;

(B) Unusual responses to sensory information;

(C) Impaired verbal/nonverbal language or social communication;

(D) Impaired ability to relate to people or the environment; and

(E) The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance. However, a child who qualifies for special education under the category of autism may also have a serious emotional disturbance as a secondary disability if the child meets the criteria under serious emotional disturbance.

(b) "Deafness" means a hearing impairment which is so severe that the child's hearing, with amplified sound, is nonfunctional for the purposes of educational performance;

(c) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments;

(d) "Hard of hearing" means a hearing condition, which is functional with or without amplified sound, and adversely affects a child's educational performance;

(e) "Mental retardation" means significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

(f) "Orthopedic impairment" means a child who has a motor disability caused by an anomaly, disease or impairment by other conditions (e.g., cerebral palsy, spina bifida, muscular dystrophy or traumatic injury) and who requires specialized and integrated services in order to benefit from an educational program;

(g) "Other health impairment" means limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis,

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asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affect a child's educational performance;

(h) "Serious emotional disturbance" means an emotional problem which affects a child's educational performance to the extent that the child cannot make satisfactory progress in the regular school program;

(i) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Children with a specific learning disability are unable to profit from regular classroom methods and materials without special educational help, and are, or will become, extreme underachievers. These deficits may be exhibited in mild to severe difficulties with perception (the ability to attach meaning to sensory stimuli), conceptualization, language, memory, motor skills, or control of attention. Specific learning disability includes such conditions as perceptual handicaps, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage;

(j) "Speech or language impairment" is the impairment of speech articulation, voice and/or fluency or the impairment or deviant development of comprehension and/or use of a spoken, written and/or other symbol system that adversely affects educational performance. The language impairment may be manifested by any combination of the following components of language; form (phonology, morphology, syntax), content (semantics) and use/function (pragmatics);

(k) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that

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adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions, information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma;

(l) "Visual impairment" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind.

(6) "Independent Educational Evaluation" means an evaluation that is not conducted by the public agency responsible for the education of the child in question.

(7) "Independent Educational Evaluator" is a certified or licensed professional examiner who is not a regular employee of the public agency responsible for the education of the child in question.

(8) "Individualized Education Program" means an educational plan which is developed and implemented under OAR 581-15-064 through 581-15-069 for each child with a disability.

(9) "Individual Having Educational Knowledge of the Child" means the child's teacher, counselor or other person employed by the school district or other agency involved in the education or care of the child who, by professional training or skill and by acquaintance with the child, is in a position to make a professional judgment concerning the child's need for special education.

(10) "Native Language" with reference to a person of limited English-speaking ability means the language normally used by that person or, in the case of a child, the language normally used by the parent of the child.

(11) "Order" has the meaning given in ORS 183.310 to 183.500.

(12) "Parent" means the parent, person acting as a parent, or legal guardian, other than a state agency or the surrogate parent.

(13) "Participating Agency" means a state or local agency, other than the school district responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(14) "Personally Identifiable" means information that includes:

- (a) The name of the child, the child's parent or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; and
- (d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(15) "Placement" means educational placement, not social service placement, by a state agency.

(16) "Private Educational Agency" means private schools with which school districts contract for the provision of special education to children with disabilities pursuant to ORS 343.221(4).

(17) "Private School" means an educational institution or agency not operated by a public agency.

(18) "Regular School Year" means the time in which pupils are normally enrolled in an annual period exclusive of any distinct extra or special session, such as separate summer sessions.

(19) "Related Services" includes transportation and such developmental, corrective and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, special equipment, reader service, volunteer services to

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enhance special educational programs, recreation, counseling services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services as are required to assist a child with a disability to benefit from special education, and includes early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only.

(20) "School District", as used in ORS 343.153, means a common or union high school district, an education service district or a state agency or institution that is charged with the duty or contracted with by a public agency to care for or educate, or both, children apparently eligible for special education.

(21) "Special Education" means specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

(22) "Superintendent" means the State Superintendent of Public Instruction or the designee of the State Superintendent of Public Instruction.

(23) "Surrogate Parent" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts or when there is reasonable cause to believe that the child has a disability and is a ward of the state.

(24) "Substitute Care Provider" means private agency as defined in ORS 418.205(1).

(25) "Transition Services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community partici-

pation. The coordinated set of activities must:

(a) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(b) Include:

  (A) Instruction;

  (B) Community experiences;

  (C) The development of employment and other postschool adult living objectives; and

  (D) If appropriate, acquisition of daily living skills and functional vocational evaluation.

Stat. Auth.: ORS 343.035, 343.045 to 343.155, 34 CFR §§300.7, 300.13, 300.16, 300.17 & 300.18

Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. & cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93

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34 CFR 300.140 Private schools.

Each State plan must include policies and procedures that ensure that the requirements of Secs. 300.400-300.403 and Secs. 300.450-300.452 are met.

(Authority: 20 U.S.C. 1413(a)(4))

34 CFR 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

34 CFR 300.401 Responsibility of State educational agency.

Each SEA shall ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

  (1) In conformance with an IEP that meets the requirements of Secs. 300.340-300.350;

  (2) At no cost to the parents; and

302 (3) At a school or facility that meets the standards that apply to the SEA and LEAs (including the requirements of this part); and

TE SCHOOLS

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NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAI and IGBAI-AR.

I. Placement of Children by Parents

A. If a child with a disability has a free appropriate public education made available by the school district and the parents choose to place the child in a private school or facility, the school district is not required to pay for the child's education at the private school or facility. The school district will make services available to the child as provided under 34 CFR 300.450–300.460.

B. Disagreements between a parent and the school district regarding the availability of a program appropriate for the child, and the question of financial responsibility will be subject to the due process procedures of 34 CFR 300.500 - 300.515.

II. Local Educational Agency Responsibility

A. The school district provides special education and related services designed to meet the needs of eligible private school students residing within the jurisdiction of the district.

III. Responsibility of a State and a Subgrantee

A. The school district provides eligible students enrolled in a private school with a genuine opportunity for equitable participation consistent with the number of eligible private school students and their needs.

B. The school district maintains continuing administrative direction and control over funds and property that benefits students enrolled in private schools.

(b) Has all of the rights of a child with a disability who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

34 CFR 300.402 Implementation by State educational agency.

In implementing Sec. 300.401, the SEA shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

(Authority: 20 U.S.C. 1413(a)(4)(B))

34 CFR 300.403 Placement of children by parents.

(a) If a child with a disability has FAPE available and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Secs. 300.450-300.452.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Secs. 300.500-300.515.

(Authority: 20 U.S.C. 1412(2)(B); 1415)

IV. Consultation with Representatives of Private School Students

A. The school district consults with appropriate representatives of students enrolled in private schools by their parents when deciding:

1. Which children will receive benefits;

2. How the children's needs will be identified;

3. What benefits will be provided;

4. How the benefits will be provided; and

5. How the project will be evaluated.

B. The school district consults with appropriate representatives of students enrolled in private schools before any decision that affects the opportunities of those students to participate in special education programs or related services.

C. The school district provides the representatives with a genuine opportunity to express their views.

V. Needs, Number of Students, and Types of Services

A. The school district determines the following matters on a comparable basis to that used by the district for providing for the participation of public school students:

1. The needs of students enrolled in private schools;

2. The number of those students who will participate in a project; and

3. The benefits the district will provide to those students.

34 CFR 300.452 Local educational agency responsibility.

Each LEA shall provide special education and related services designed to meet the needs of private school children with disabilities residing in the jurisdiction of the agency.

(Authority: 20 U.S.C. 1413(a)(4)(A); 1414(a)(6))

34 CFR 300.554 Children in public or private institutions.

Each SEA shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to ensure that Sec. 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

Note: Under section 612(5)(B) of the statute, the requirement to educate children with disabilities with nondisabled children also applies to children in public and private institutions or other care facilities. Each SEA must ensure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

34 CFR 76.650 Private schools; purpose of §§76.651–76.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. §§76.651–76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

VI. Benefits for Private School Students

A. The special education and related services provided by the school district are comparable in quality, scope and opportunity for participation to those students enrolled in the public school.

B. The school district provides equitable opportunities for participation by students enrolled in private schools as for public school students in a particular attendance area, grade or age level for those students who have the same needs as public school students and are in that group, attendance area, age or grade level.

C. If the needs of the students enrolled in private schools are different from the needs of students enrolled in public schools, the district provides program benefits for the private school students that are different from the benefits of the public school students.

VII. Level of Expenditures for Students Enrolled in Private Schools

A. The school district ensures by a yearly audit that it spends the same average amount of program funds on students who receive special education services in private and public schools.

B. The school district may spend a different average amount for students in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

VIII. Separate Classes Prohibited

A. The school district does not use program funds for classes that are organized separately on the basis of school enrollment or religion if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Note: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

34 CFR 76.651 Responsibility of a State and a subgrantee.

(a) (1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§76.652–76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b) (1) A State shall ensure that each subgrantee complies with the requirements in §§76.651–76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

IX. Funds not to Benefit a Private School

A. The school district does not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

B. The school district does not use program funds to meet the needs of a private school or the general needs of the students enrolled in a private school, but uses the funds to meet the specific needs of students enrolled in private schools.

X. Use of Public School Personnel

A. The school district uses public funds to make public personnel available in other than public facilities to the extent necessary to provide equitable program benefits designed for students enrolled in a private school, if those benefits are not normally provided by the private school.

XI. Use of Private School Personnel

A. The school district may use program funds to pay for the services of an employee of a private school if the employee performs the services outside of his/her regular hours of duty and performs the services under public supervision and control.

XII. Equipment and Supplies

A. The school district keeps title to and exercises administrative control of all equipment and supplies used with program funds.

1. All equipment and supplies placed in a private school are used only for purposes of the project, and

2. Can be removed from the private school without remodeling.

B. The district will remove the equipment or supplies from a private school if they are no longer needed for the purposes of

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

the project or removal is necessary to avoid use for other than project purposes.

XIII. Parochial Schools

A. The school district does not provide special education and related services in a parochial or religious school or facility.

34 CFR 76.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall ensure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with §76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall ensure that the equipment or supplies placed in a private school:

  (1) Are used only for the purposes of the project; and

  (2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

  (1) The equipment or supplies are no longer needed for the purposes of the project; or

  (2) Removal is necessary to avoid use of the equipment or supplies for other than project purposes.

(Authority: 20 U.S.C. 1221e-3(a)(1))

34 CFR 76.662 Construction.

A subgrantee shall ensure that program funds are not used for the construction of private school facilities.

(Authority: 20 U.S.C. 1221e-3(a)(1))

OAR 581-15-126 Private Educational Agencies; Approval of Special Education Programs.

(1) Private educational agencies furnishing special education to handicapped children pursuant to a contract with a public agency shall have on file with the Oregon Department of Education a plan approved under OAR 581-15-131 for the special education programs.

(2) The plan shall:

  (a) Describe the population to be served;

  (b) Describe the instructional services to be provided;

  (c) Include a staff roster indicating name, instructional qualification specified under OAR 581-15-131(3) where appropriate, and assignment of all special education personnel employed by the private educational agency;

  (d) Describe facilities, equipment and materials to be furnished and utilized;

  (e) Document compliance with state and local health, fire and safety standards; and

  (f) Meet the minimum standards of OAR 581-15-131.

(3) The Department shall appraise the plan and site facilities:

(a) Upon initial application for approval; and

(b) At the expiration of the second reapproval under section (4) or when major program changes occur.

(4) Upon completing its appraisal for initial approval, the Department shall advise the private educational agency whether the plan is approved or disapproved. Approval shall be for the period from the effective date of the approval to the next 15th day of August or, if such period is less than three months, to the 15th day of August of the following year. Reapproval for a second or third period of one year may be made upon submission to the Department by the private educational agency of a satisfactory annual report which shall indicate all modifications of the approved plan.

(5) Before implementing any major program change which is inconsistent with the plan approved under sections (3) or (4), the private educational agency shall file an amendment to the plan with the Department of Education. The proposed amendment shall specify the nature of the change, the number of children affected and any other information required by the Department. The Department shall inform the agency whether the amendment is approved or disapproved. If the private educational agency fails to submit an amendment prior to implementing a major program change or implements the proposed major program change after the amendment is disapproved the Department may rescind the plan approval granted under section (4).

(6) As used in this section, "major program change" includes change of location of the educational program, administrative organization, qualifications of instructional personnel, instructional services provided, population to be served and any other changes which significantly affect the program offered.

Stat. Auth.: ORS Ch. 343
Hist: 1EB 28-1978,f. & ef. 7-20-78

OAR 581-15-131 Minimum Standards for Private Educational Agency Special Education Programs.

To be approved, a plan for a special education program in a private educational agency shall provide that:

(1) The instructional program consists of an individualized education program developed for each child who is handicapped under OAR 581-15-064 through 581-15-069, 581-15-146 and 581-15-151.

(2) Confidentiality of student records for each child with a handicap is maintained under OAR 581-15-055.

(3) At least one instructional staff person in the special education program must:

(a) Be certificated in accordance with the rules established by the Teacher Standards and Practices Commission to provide special education appropriate to the types of children he/she will serve; or

(b) Hold a current valid teacher's certificate from another state equivalent to that issued under subsection (3)(a) of this rule; or

(c) Possess a current valid certificate from the American Speech and Hearing Association, Council of Education for the Deaf or other national professional organization approved by the State Superintendent, appropriate to his/her teaching assignment; or

(d) Be supervised by a representative of a teacher training or educational research program of the State System of Higher Education.

(4) The length of the educational program is comparable to the length of the regular school day, regular school week, and regular school year provided by the public schools for children of similar age and handicap.

(5) Equipment and materials are provided under OAR 581-15-043.

(6) Facilities for special education are provided under OAR 581-15-041.

(7) Transportation provided for children with handicaps meets the requirements of OAR 581-22-292 through 581-22-296.

(8) The governing body of the private educational agency has adopted:

  (a) Procedures for informing the school district with whom the private educational agency has contracted of all verbal or written complaints received by the private educational agency concerning the educational services provided the child with a handicap; and

  (b) Procedures for informing the school district of any changes in the child's educational program which vary from the child's individualized education program. The private educational agency shall inform the school district of changes in the child's short-term instructional objectives.

Stat. Auth.: ORS Ch. 343
Hist: 1EB 28-1978, f. & ef. 7-20-78; EB 40-1988 (Temp), f. & cert. ef. 11-15-88; EB 20-1989, f. & cert. ef. 5-15-89

OAR 581-15-136 Rights of Children in Private Educational Agencies.

A school district placing a handicapped child in or referring such a child to a private educational agency shall ensure that the child receives the same rights and protections as are required for handicapped children in public schools and their parents under OAR 581-15-039 and 581-15-059 through 581-15-098.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-141 Contracting by School Districts with Private Educational Agencies.

(1) Subject to approval of the State Superintendent of Public Instruction, the district school board of any school district in which there

are children under 21 years of age who require special education may, when the board considers a contract to be economically feasible and in the interests of the learning opportunities of eligible students, contract with private educational agencies which have filed approved plans for special education programs with the Oregon Department of Education pursuant to OAR 581-15-126.

(2) Districts proposing to place a handicapped student or an individual who is pregnant in a private educational agency shall ensure that:

  (a) The student is enrolled as a resident student of the school district; and

  (b) The student is eligible to receive special education under OAR 581-15-051.

(3) A school district contracting with a private educational agency under section (1) shall ensure that either transportation or room and board is provided under 581-15-030.

(4) The placement shall be in accordance with OAR 581-15-059.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 40-19978, f. & ef. 10-5-78

OAR 581-15-151 Private Schools; Individualized Education Program.

If a handicapped child is enrolled in a private school the child may receive special education from a school district. Before the special education is provided, the district shall:

(1) Initiate and conduct meetings to develop, review and revise an individualized education program for the child in accordance with OAR 581-15-065, and

(2) Ensure that a representative of the private school facility has an opportunity to attend each meeting. If the representative cannot attend, the district shall use other methods to ensure participation

by the private school, including individual or conference telephone calls.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-156 Placement by Parents of Children in Private Schools.

(1) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school, the school district is not required to pay for the child's education at the private school. The school district shall, however, make services available to the child as provided in OAR 581-15-166 through 581-15-201.

(2) Disagreements between a parent and the school district regarding the availability from the school district of a program appropriate for the child and the question of financial responsibility are subject to procedures under OAR 581-15-076 through 581-15-098.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-161 Applicability of OAR 581-15-166 through 581-15-201.

OARs 581-15-166 through 581-15-201 apply only to handicapped children placed in or referred to private schools who have not been placed or referred by a public agency.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

Sample Procedures

OAR 581-15-166 School District Responsibility for Children in Private Schools.

(1) School districts shall make available special education designed to meet the needs of resident handicapped children in private schools. Such special education shall not be provided in the private school.

(2) School districts shall provide such children with genuine opportunities for equitable participation in special education consistent with the number of children and their needs.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78; 1EB 25-1980, f. & ef. 11-7-80

OAR 581-15-171 Determination of Needs; Number of Children and Types of Service.

The needs of handicapped children in private schools, the number of them who will participate pursuant to Public Law 94-142 and the types of special education which the school district will provide for them shall be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used for handicapped children enrolled in public school.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-176 Service Arrangements.

Services to handicapped children in private schools may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-181 Differences in Services to Handicapped Children in Private Schools.

School districts may provide special education to a handicapped child who is enrolled in a private school which is different from the special education provided to public school children if:

(1) The differences are necessary to meet the special needs of the handicapped child enrolled in the private school, and

(2) The special education is comparable in quality, scope and opportunity for participation to that provided to public school children with similar needs.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-186 Equipment.

(1) Equipment acquired with funds under Part B of the Education of the Handicapped Act as amended by Section 5 of Public Law 94-142 may be placed on private school premises for a limited period of time, but the title to and administrative control over all such equipment shall be retained and exercised by a public agency.

(2) In exercising administrative control, the public agency shall keep records of and account for the equipment, shall ensure that the equipment is used solely for the purposes of the program or project for which it was placed, and shall remove the equipment from the private school premises if necessary to avoid its being used for other purposes, or if it is no longer needed for the purposes of the program or project.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-191 Prohibition of Segregation.

Programs or projects provided in public facilities which include both handicapped children enrolled in private schools and handicapped children enrolled in public schools may not include classes that are separate on the basis of school enrollments or the religious affiliations of the children.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-196 Funds and Property Not to Benefit Private Schools.

Funds derived from Part B of the Education of the Handicapped Act as amended by Section 5 of Public Law 94-142 and property derived from those funds may not inure to the benefit of any private school.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

OAR 581-15-201 Existing Level of Instruction.

School district provisions for serving private school handicapped children may not include the financing of any private school instruction.

Stat. Auth.: ORS Ch. 343
Hist.: 1EB 28-1978, f. & ef. 7-20-78

34 CFR 300.1 Purpose.

The purpose of this part is:

(a) To ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs;

(b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist states and localities to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

34 CFR 300.300 Timelines for free appropriate public education.

(a) General. Each State shall ensure that FAPE is available to all children with disabilities aged 3 through 18 within the State not later than September 1, 1978, and to all children with disabilities aged 3 through 21 within the State not later than September 1, 1980.

(b) Age ranges 3-5 and 18-21. This paragraph provides rules for applying the requirement in paragraph (a) of this section to children with disabilities aged 3, 4, 5, 18, 19, 20, and 21:

(1) If State law or a court order requires the State to provide education for children with disabilities in any disability category in any of these age groups, the State must make FAPE available to all children with disabilities of the same age who have that disability.

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAJ and IGBAJ-AR.

I. Program Options

A. Each eligible student has available a variety of educational programs and services available to nondisabled students including art, music, industrial crafts, consumer and homemaking education, and vocational education.

II. Nonacademic Services

A. The school district provides equal opportunity for students with disabilities for participation in nonacademic and extracurricular services and activities.

B. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to agencies, and employment of students, including both employment by the public agency and assistance in making outside employment available.

III. Physical Education

A. The school district provides physical education services, specially designed if necessary, to each eligible student.

B. The school district provides the opportunity to participate in the regular physical education program available to nondisabled students unless the student is enrolled full time in a separate facility or the student needs specially designed physical education.

C. If specially designed physical education is prescribed in a student's IEP, the school district will provide the services

(2) If a public agency provides education to nondisabled children in any of these age groups, it must make FAPE available to at least a proportionate number of children with disabilities of the same age.

(3) If a public agency provides education to 50 percent or more of its children with disabilities in any disability category in any of these age groups, it must make FAPE available to all its children with disabilities of the same age who have that disability. This provision does not apply to children aged 3 through 5 for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

(4) If a public agency provides education to a child with a disability in any of these age groups, it must make FAPE available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make FAPE available to a child with a disability in one of these age groups if:

  (i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nondisabled children in that age group; or

  (ii) The requirement is inconsistent with a court order that governs the provision of free public education to children with disabilities in that State.

(c) Children aged 3 through 21 on reservations. With the exception of children identified in Sec. 300.709(a)(1) and (2), the SEA shall be responsible for ensuring that all of the requirements of Part B of the Act are implemented for all children aged 3 through 21 on reservations.

(Authority: 20 U.S.C. 1411(f); 1412(2)(B); S. Rep. No. 94-168, p. 19 (1975))

Note 1: The requirement to make FAPE available applies to all children with disabilities within the State who are in the age ranges required under Sec. 300.300 and who need special education and related services.

directly or make arrangements for them to be provided by other agencies or programs.

D. The school district ensures that physical education is provided for eligible students enrolled in separate facilities, if the district is responsible for the education of such students.

This includes children with disabilities already in school and children with less severe disabilities, who are not covered under the priorities under Sec. 300.321.

Note 2: In order to be in compliance with Sec. 300.300, each State must ensure that the requirement to identify, locate, and evaluate all children with disabilities is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with Secs. 300.530-300.533. If, as a result of the evaluation, it is determined that a child needs special education and related services, an IEP must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

Note 3: The requirement to identify, locate, and evaluate children with disabilities (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to ensure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing FAPE. One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement that has the same age range as child find. Moreover, while a State is not required to provide FAPE to children with disabilities below the age ranges mandated under Sec. 300.300, the State may, at its discretion, extend services to those children, subject to the priority requirements of Secs. 300.320-300.324.

34 CFR 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the require-

ments of this part. For example, when it is necessary to place a child with a disability in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

(Authority: 20 U.S.C. 1401 (18); 1412(2)(B))

34 CFR 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Note: This requirement applies to placements that are made by public agencies for educational purposes, and includes placements in State-operated schools for children with disabilities, such as a State school for students with deafness or students with blindness.

34 CFR 300.305 Program options.

Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Note: The above list of program options is not exhaustive, and could include any program or activity in which nondisabled students participate.

Sample Procedures

34 CFR 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

34 CFR 300.307 Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(a)(16); 1412(5)(B); 1414(a)(6))

Note: The Report of the House of Representatives on Public Law 94-142 includes the following statement regarding physical education: Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

*The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: H. R. Rep. No. 94-332, p. 9 (1975))

34 CFR 76.304

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

AILABLE TO THE PUBLIC

Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAK and IGBAK-AR.

I. Public Inspection

A. The school district will provide the public the opportunity to review and comment on any special education program application, evaluation, periodic program plan, and report at regularly scheduled school board meetings.

B. The school district will provide notice that such items will be on the agenda prior to the school board meeting.

C. The school district may provide the public the opportunity to review and comment on any special education program application, evaluation, periodic program plan, and report at local special education advisory council meetings or special meetings set up specifically to discuss one of these documents.

34 CFR 76.500 Title VI of the Civil Rights Act of 1964.

Policies and procedures shall ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance.

34 CFR 76.500 Title IX of the Education Amendments of 1972.

Policies and procedures ensure that no person shall be discriminated against on the basis of sex in education programs and activities receiving federal financial assistance.

34 CFR 76.500 Rehabilitation Act of 1973.

Policies and procedures ensure that no person shall be discriminated against on the basis of disability in education programs and activities receiving federal financial assistance.

34 CFR 76.500 Age Discrimination Act of 1975.

Policies and procedures ensure that no person shall be discriminated against on the basis of age in education programs and activities receiving federal financial assistance.

Sample Procedures

NOTE: A sample policy to accompany the procedures in this section can be found in the OSBA document coded JB.

I. Nondiscrimination on the Basis of Race, Color, or National Origin

The school district shall not conduct any program or activity that discriminates against any person on the basis of race, color, or national origin.

II. Nondiscrimination on the Basis of Sex

The school district shall not conduct any program or activity that discriminates against any person on the basis of sex.

III. Nondiscrimination on the Basis of Disability

The school district shall not conduct any program or activity that discriminates against any person on the basis of disability.

IV. Nondiscrimination on the Basis of Age

The school district shall not conduct any program or activity that discriminates against any person on the basis of age.

34 CFR 300.16 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded IGBAL and IGBAL-AR.

I. Determination of Related Services Under PL 94-142 and PL 101-476

Participants in the IEP team meetings shall determine if any developmental, corrective or other supportive services (including transportation) are required to assist the student to benefit from special education. Such service(s) must be written into the IEP as related service(s).

In deciding whether a particular developmental, corrective or other supportive service is a related service, the members of the IEP team shall:

A. Review the student's present level of educational performance, the annual goals and short term instructional objectives.

B. Determine whether or not a related service is required to carry out the goals and objectives in the IEP. To determine this, the participants shall determine if the service is an integral part of the annual goals and short term instructional objectives of the IEP.

The IEP team shall determine that a service is an integral part of the program of instruction if:

1. The service directly affects the ability of the student to acquire knowledge, skills, or abilities identified in the annual goals and short term instructional objectives; or

2. The instructional success is dependent upon the service (e.g., interpreter services, braille materials, transportation to the instruction).

C. If a service needed by, or of benefit to, a student is determined by the IEP team to be a related service, the service shall be

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(5) "Occupational therapy" includes—

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(11) "School health services' means services provided by a qualified school nurse or other qualified person.

(12) "Social work services in schools" includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

Sample Procedures

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.

(13) "Speech pathology" includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(14) "Transportation" includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(a)(17))

Note: With respect to related services, the Senate Report states:

The Committee bill provides a definition of related services, making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(S. Rep. No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a child with a disability to benefit from special education.

There are certain kinds of services that might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

34 CFR 300.17 Special education.

(a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and

(ii) Instruction in physical education.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child

with a disability, and is considered special education rather than a related service under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adaptive physical education, movement education, and motor development.

(Authority: 20 U.S.C., 1401(a)(16))

(3) "Vocational education" means organized educational programs offering a sequence of courses that are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability

skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(Authority: 20 U.S.C. 1401(16))

Note 1: The definition of special education is a particularly important one under these regulations, since a child does not have a disability under this part unless he or she needs special education. (See the definition of chilren with disabilities in §300.7.) The definition of related services (§300.16) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related services, and the child is not a child with a disability and is therefore not covered under the Act.

Note 2: The above definition of vocational education is taken from the Carl D. Perkins Vocational and Applied Technology Education Act (Pub. L. 96-524, as amended by Pub. L. 101-392). Section 118(a)(3)(A)–(B) of this statute further provides—

Vocational education programs and activities for individuals with handicaps will be provided in the least restrictive environment in accordance with section 612(5)(B) of the Individuals with Disabilities Education Act and will, whenever appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of such Act. Students with handicaps who have individualized education programs developed under section 614(a)(5) of the Individuals with Disabilities Education Act shall, with respect to vocational education programs, be afforded the rights and protections guaranteed such students under sections 612, 614, and 615 of such Act.

OAR 581-15-005 Definitions.

The following definitions apply to OAR 581-15-015 through 581-15-296, unless the context requires otherwise: . . .

(5) "Children with Disabilities" includes children who require special education in order to obtain the education of which they are capable, because of mental, physical, emotional or learning problems. These

groups include, but are not limited to those categories that traditionally have been designated: Mental retardation, hearing impairment, including, hard of hearing and deafness, deaf/blind, speech or language impairments, visual impairments, serious emotional disturbances, orthopedic or other health impairments, autism, traumatic brain injury, and specific learning disabilities:

(a) "Autism" means a developmental disability typically affecting the processing, integrating, and organizing of information that significantly impacts communication, social interaction, functional skills, and educational performance. Essential features, generally appearing during the first three years, may include:

  (A) Inconsistencies or discrepancies in the development of physical, language, social, or cognitive skills;

  (B) Unusual responses to sensory information;

  (C) Impaired verbal/nonverbal language or social communication; and

  (D) Impaired ability to relate to people or the environment;

  (E) The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance. However, a child who qualifies for special education under the category of autism may also have a serious emotional disturbance as a secondary disability if the child meets the criteria under serious emotional disturbance.

(b) "Deafness" means a hearing impairment which is so severe that the child's hearing, with amplified sound, is nonfunctional for the purposes of educational performance;

(c) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the child cannot be accommodated in special education programs designed solely for students having hearing or visual impairments;

(d) "Hard of hearing" means a hearing condition, which is functional with or without amplified sound, and adversely affects a child's educational performance;

(e) "Mental retardation" means significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

(f) "Orthopedic impairment" means a child who has a motor disability caused by an anomaly, disease or impairment by other conditions (e.g., cerebral palsy, spina bifida, muscular dystrophy or traumatic injury) and who requires specialized and integrated services in order to benefit from an educational program;

(g) "Other health impairment" means limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affect a child's educational performance;

(h) "Serious emotional disturbance" means an emotional problem which affects a child's educational performance to the extent that the child cannot make satisfactory progress in the regular school program;

(i) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Children with a specific learning disability are unable to profit from regular classroom methods and materials without special educational help, and are, or will become, extreme underachievers. These deficits may be exhibited in mild to severe difficulties with perception (the ability to attach meaning to sensory stimuli), conceptualization, language, memory, motor skills, or control of attention. Specific learning

Sample Procedures

disability includes such conditions as perceptual handicaps, brain injury, dyslexia, minimal brain dysfunction, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural, or economic disadvantage;

(j) "Speech or language impairment" is the impairment of speech articulation, voice and/or fluency or the impairment or deviant development of comprehension and/or use of a spoken, written and/or other symbol system that adversely affects educational performance. The language impairment may be manifested by any combination of the following components of language; form (phonology, morphology, syntax), content (semantics) and use/function (pragmatics);

(k) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions, information processing; and speech. The term does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma;

(l) "Visual impairment" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes those children who are partially sighted or blind. . . .

(19) "Related services" includes transportation and such developmental, corrective and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, special equipment, reader service, volunteer services to enhance special educational programs, recreation, counseling

services, including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services) as are required to assist a child with a disability to benefit from special education, and includes early identification and assessment of disabling conditions in children. Medical services shall be for diagnostic and evaluation purposes only. . . .

(21) "Special education" means specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

Stat. Auth.: ORS 343.035, 343.045 to 343.155, 34 CFR §§300.7, 300.13, 300.16, 300.17 & 300.18

Hist.: 1EB 8-1978, f. & ef. 3-3-78; 1EB 35-1978, f. & ef. 10-5-78; 1EB 18-1979(Temp), f. & ef. 11-15-79; 1EB 5-1980, f. 2-22-80, ef. 2-23-80; 1EB 18-1983(Temp), f. & ef. 12-20-83; 1EB 5-1985, f. 1-30-85, ef. 1-31-85; EB 39-1988(Temp), f. & cert. ef. 11-15-88; EB 18-1989, f. & cert. ef. 5-15-89; EB 28-1989(Temp), f. &cert. ef. 10-16-89; EB 3-1990, f. & cert. ef. 1-26-90; EB 25-1991(Temp), f. & cert. ef. 11-29-91; EB 16-1992, f. & cert. ef. 5-13-92; EB 9-1993, f. & cert. ef. 3-25-93

ORS 343.035 Definitions.

As used in this chapter unless the context requires otherwise:

(1) "Children with disabilities" means those school age children who are entitled to an appropriate education as specified by ORS 339.115 and who require special education because they have been evaluated as having one of the following conditions as defined by rules established by the State Board of Education: Mental retardation, hearing impairment including difficulty in hearing and deafness, speech or language impairment, visual impairment, including blindness, serious emotional disturbance, orthopedic or other health impairment, autism, traumatic brain injury or specific learning disabilities.

(13) "Related services" means transportation and such developmental, corrective and other supportive services as are required to assist a child with disabilities to benefit from special education, and includes speech pathology and audiology, psychological services, physical and

Sample Procedures

occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. "Related services" also includes school health services, social work services in schools and parent counseling and training.

(16) (a) "Special education" means specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings, and instruction in physical education.

(b) "Special education" also includes speech pathology or vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

[Formerly 343.212; 1977 c.528 §1; 1983 c.731§1; 1991 c.749 §§1, 1a; 1991 c.795 §1; 1993 c.409 §1; 1993 c.749 §3]

Sample Procedures

Appendix B: D

Student behavior management and the role of discipline in the school is one of t
today. Discipline of students with disabilities is particularly challenging given f
used with this population. It is hoped that the information provided in these sug
policy and procedures relative to discipline of students with disabilities.

This section deals primarily with procedures related to the suspension and expu
on effective schools, it is interesting to note that schools which manage behavior
to discipline. Instead, effective schools focus on teaching students how to behave
teacher adjustments and school supports for ensuring student success and enco
management, please refer to *A Resource Guide for Oregon Educators on Develop*
tion.

Caution is advised when considering suspension or expulsion with students wit
address the inappropriate behavior of disabled students but long term suspensi
courts as significant changes in placement. The U.S. Department of Education's
change in placement without prior notice and an evaluation. See Honig v Doe 1
Suspension or Expulsion of Disabled Students.

Federal and State Legal Obligations

MDT Team Review

Courts uniformly require that a determination of whether a disabled student's misconduct arises from the student's disability be made by a group of persons, including individuals personally familiar with the student and knowledgeable about special education. This requirement is based upon both 34 CFR 300.533 (3) and 45 CFR 104.35 (a) and (c) (3).

The convening of the MDT to determine the relationship of the behavior to the disability and subsequent program and placement decisions should occur when the student is the subject of expulsion or serial suspensions which total more than ten cumulative school days (OCR Memorandum, October 28, 1988 [EHLR 307:05]). The OCR memorandum notes: "If a proposed exclusion of a disabled child is permanent (expulsion) or for an indefinite period, or for more than 10 cumulative school days, the exclusion constitutes a 'significant change of placement' under Sec. 104.35(a) of the Section 504 regulation." The memorandum further states "... OCR will not consider a series of suspensions that, in the aggregate, are for 10 days or fewer to be a significant change in placement. Among the factors

ISCIPLINE

ie most critical, perplexing and frustrating problems facing educators
deral and state laws which regulate how disciplinary measures are to be
gested procedures is useful to you as you develop building and district

lsion of students with disabilities. However, in examining current research
effectively do not place major emphasis on negative or punitive approaches
responsibly at school and incorporate prevention strategies which involve
uraging responsible choices. For further information on proactive student
ing Student Responsibility published by the Oregon Department of Educa-

disabilities. Suspension may be used sparingly as a teaching tool to
ns, very frequent suspensions and expulsions have been viewed by the
regulations provide that a school district may not make a significant
08 S.Ct. 592 (1988), OCR Memorandum, October 28, 1988 - Long-term

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Sample Procedures

NOTE: Sample policies and administrative regulations to accompany the procedures in this section can be found in the OSBA documents coded JGDA/JGEA and JGDA/JGEA-AR.

I. When to Conduct an MDT Review

A. Short-term Suspension

1. The MDT may be convened when students are to be or have been suspended. The purpose of the MDT meeting is to review assessment information and determine whether modifications to the IEP, a change of placement or behavioral interventions are needed to alleviate the inappropriate behavior and teach appropriate replacement behaviors.

2. Parents should be notified immediately if their child will be or has been suspended so that they can assist the school in gathering pertinent information relative to the student's behavior and in exploring options to support the student.

that should be considered in determining whether a series of suspensions has resulted in a significant change of placement are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school."

These disciplinary procedures also apply to bus suspensions, whether the student is receiving transportation as a related service in accordance with an IEP, or under a district's regular transportation service. An OCR inquiry response (EHLR 305:51) indicates that "The suspension of a handicapped student from transportation may constitute a 'significant change in placement' if a school district: has been transporting the student...; suspends the student from the transportation as a disciplinary measure; and provides no other form of transportation."

Under Oregon law, a suspension may not exceed seven calendar days [OAR 581-21-065]. The Oregon Department of Education interprets this provision to apply to each offense.

Determining Whether the Misconduct is Related to the Student's Disability

In Doe v Maher, the Ninth Circuit Court stated that the MDT must determine whether the conduct has a direct and substantial relation to, the child's handicap. Put another way, a handicapped child's conduct is covered by this definition only if the handicap significantly impairs the child's behavioral controls. Although this definition may, depending on the circumstances, include the conduct of handicapped children who possess the raw capacity to conform their behavior to prescribed standards, it does not embrace conduct that bears only an attenuated relationship to the child's handicap. An example of such attenuated conduct would be a case where a child's physical handicap results in his loss of self-esteem, and the child consciously misbehaves in order to gain the attention, or win the approval, of his peers. Although such a scenario may be common among handicapped children, it is no less common among children suffering from low self-esteem for other, equally tragic reasons. [793 F2d 1470, 1480 8(1986)]

3. Some of the options the school could consider to support the student include:

    a. Meet with the parents to discuss student needs;

    b. Conduct a behavioral evaluation;

    c. Develop a behavioral plan;

    d. Revise the IEP to reflect behavioral goals for the student and planned interventions, adaptations and responses to behavioral incidents;

    e. Temporary modification or reassignment of the student's educational program;

    f. Temporary assignment to alternate in-school location with homework assigned and continuance of special education services.

4. When a student has been suspended more than once, an MDT meeting should be held immediately to evaluate the appropriateness of the student's IEP and placement. The MDT should also review whether the series of suspensions, in their aggregate, may constitute a significant change of placement. The MDT should evaluate this question by examining the following factors:

    a. The length of each suspension;

    b. The proximity of the suspensions to one another; and

    c. The total amount of time the student is excluded from school.

5. If the MDT determines that the suspensions do constitute a change of placement, the MDT must determine whether there is a relationship between the reason for suspension and the student's disability. If such a relationship is found, refer to procedures outlined in II A.

When the Behavior is Related to Student's Disability or Results From Inappropriate Placement/Program

If the team determines that the behavior resulted from the student's disability or was the result of an inappropriate placement, the district may not expel or suspend the student for longer than ten cumulative school days without initiating change of placement procedures.

Doe v Maher [EHLR 557.353]

Honig v Doe 108 S.Ct. 592 (1988)

OCR Memorandum, October 28, 1988 - Long-term Suspension or Expulsion of Handicapped Students.

When Behavior Is NOT Related to Student's Disability and/or DOES NOT Result From Inappropriate Placement/Program

If the MDT team determines that the student's actions, behavior or activity is unrelated to that student's disability and the team determines that the student's program and placement are appropriate, the school district should follow its suspension and/or expulsion policies as applied to students without educational disabilities **except that** special education services must be continued for that student.

OSERS, in a letter of interpretation [16 EHLR 734, December 1989], responded to questions about whether the Ninth Circuit Court of Appeals Decision in Doe v Maher (which went to the Supreme Court as Honig v Doe) allowed for the cessation of special education services during an expulsion period. OSERS responded by stating: "The department believes the discussion in the Ninth Circuit's Doe v Maher decision is properly determined not to be a manifestation of handicap is to be "dicta" and not holding in that case. As such, we do not believe that this language represents controlling law in the Ninth Circuit. We continue to believe that all states and school districts, including those within the Ninth Circuit, are required by EHA-B and IDEA to ensure that special educational services are provided to children with handicaps during periods of long-term

B. Long-term Suspension and Expulsion

1. A change in placement occurs and the MDT must be convened if the student:

    a. Is suspended for more than seven consecutive calendar days;

    b. Is suspended for a total of more than ten cumulative school days during a school year; or

    c. Is expelled.

2. If a student is being considered for any of the disciplinary actions identified above (B 1), the MDT must determine whether the student's misconduct is related to that student's disability or is the result of an inappropriate placement.

3. The MDT must include individuals who are knowledgeable about the student and his or her disability. The parents should be invited to participate in the information-gathering and decision process of the MDT as appropriate. The team should base decisions upon a review of all pertinent information including the student's IEP, current evaluation data, documented behavioral observations, etc.

C. Bus Suspensions

Suspensions from the school bus are considered suspensions from school if they effectively prevent the student from accessing the school. As such, all of the above procedures relative to short and long term suspensions apply to bus suspensions.

II. Decision of the MDT

A. Determining Whether the Misconduct is Related to the Student's Disability:

suspension or expulsion, regardless of whether the child's misconduct is a manifestation of the handicapping condition."

Since expulsion and extended suspensions as described above constitute a change of placement [Honig v Doe 108 S.Ct. 592 (1988) /Doe v Maher, 793 F.2d 1470 (1986) /S-1 v Turlington, 635 F.2nd 342 (5th Cir. 1981)], the school district is required to follow change of placement procedures [34 CFR Sec. 104.35(a)] including:

1. Parent notification of the change of placement including notification of their rights to administrative and judicial review.
2. An evaluation of the child's needs (may include a review of records and a more formal evaluation if information is not current).
3. Continued special education and related services during the suspension/expulsion period.

If expulsion is being considered, the district must also provide the student and his/her parents the due process rights afforded all students in accordance with ORS 339.240 and 339.250 and OAR 581-21-070.

OAR 581-21-071 District Information for Parents and Students Regarding the Availability of Alternative Education Programs

2. District school boards shall adopt policies and procedures for notification to students and parents, or guardians of the availability of appropriate and accessible alternative programs. This notification shall be provided in the following situations:
   (a) Upon the occurrence of a second or any subsequent occurrence of a severe disciplinary problem within a three-year period;
   (b) When the district finds a student's attendance pattern to be so erratic that the student is not benefiting from the educational program;

1. Before expulsion the MDT must determine whether the misconduct is a manifestation of the student's disabling condition.

2. The MDT must examine the unique characteristics of the student and determine whether the disability significantly impairs the student's behavioral controls.

B. When the misconduct is related to the student's disability or results from inappropriate placement/program:

1. The school district cannot expel or continue to suspend the student.

2. The MDT shall review the student's educational needs, current IEP and conduct a functional assessment of the student's behavior, if necessary. The MDT should examine whether:

    a. The IEP goals, objectives and related service provisions are appropriate given the student's current educational needs;

    b. There is a need for additional special education services;

    c. Additional related services are necessary for the student to benefit from the special education program;

    d. Changes are needed in behavior management strategies with the student including alternative measures such as direct teaching of appropriate behavior, consistent home/school contact, behavior plan development, environmental analysis and modification, instructional modifications, adjustments in scheduling, use of study carrels, planned use of time out, etc.;

    e. The student's educational placement is appropriate;

(c) When the district is considering expulsion as a disciplinary alternative;

(d) When a student is expelled pursuant to subsection (3) of ORS 339.250; and

(e) When an emancipated minor, parent, or legal guardian applies for a student's exemption from compulsory attendance on a semiannual basis as provided in ORS 339.030(5).

Students Exhibiting Dangerous Behavior

If the school district determines that the student's behavior, which is related to his/her disability, poses imminent danger to others and the parent refuses to agree to a change of placement, the school district may not change the student's placement without a court order.

The U.S. Supreme Court decision in Honig v Doe allows for the suspension of students, for up to ten cumulative school days, who pose "an immediate threat to the safety of others." This authority was viewed by the Supreme Court as not only "ensuring that school administrators can protect the safety of others by promptly removing the most dangerous students, it also provides for a cooling down period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases which the parents of a truly dangerous child adamantly refuse to permit any change in the placement, the ten-day respite gives school officials an opportunity to invoke the aid of the courts under Section 1415 (e) (2), which empowers courts to grant any appropriate relief."

f. There is a need for involvement with community youth-service agencies or organizations such as Children's Services Division, County Mental Health, Juvenile Services, etc.;

g. The student is exhibiting behavior which poses a threat of imminent danger to others.

C. When behavior IS NOT related to student's disability and/or DOES NOT result from inappropriate placement/program:

1. A school district may expel or continue to suspend if the MDT has determined that the student's misconduct is not related to his or her disability or is not the result of an inappropriate program or placement.

2. Prior to a proposed expulsion or long-term suspension, a school district shall notify the parents in writing about the following:

   a. IEP meeting to develop or revise the current IEP;

   b. Proposed change of placement;

   c. Parental rights under special education law, including the right to a due process hearing;

   d. Information about accessible and appropriate alternative educational programs;

   e. Intent to conduct a hearing to consider expulsion, the reason for proposing expulsion, supporting facts, and the rights of students and parents related to the conduct of the hearing as required by OAR 581-21-070;

   f. The right of the parents or student, if the student is 18 years or older, to waive the expulsion hearing procedure; and

   g. The determination by the district that the student's misconduct is not related to the student's disability.

3. An IEP team meeting shall be convened to develop an IEP for the suspension/expulsion period. The IEP team should determine whether:

   a. Additional special education and related services are needed to address the inappropriate behavior related to the suspension/expulsion;

   b. Restructuring of the current IEP will be necessary to prevent regression in student learning; and

   c. The alternative educational programs proposed by the district will be compatible with the student's special education needs.

4. The IEP team should encourage the development of a regular education "reentry plan" that allows the student to earn credit for his/her academic work during the suspension/expulsion period. The student's regular education program should not be suspended or withdrawn, but instead modified to enable the student to continue working on academic requirements for classes or for high school graduation.

5. The MDT should make the following decisions after an "interim or suspension IEP" has been developed:

   a. Determine whether the proposed educational placement will meet the "least restrictive environment" requirements during the period of the suspension/expulsion. The alternatives may include placement:

      (1) at another school within the district;

      (2) in another school district;

      (3) in an alternative school or program;

(4) in a private educational agency program;

(5) in a day treatment program;

(6) in a residential program; or

(7) that provides for home instruction.

b. If home instruction is being considered as a placement option, the MDT should document that this decision was carefully considered and took into account the student's need to be educated with nondisabled students where feasible.

c. If an alternative educational program is being considered, the MDT should ensure that it will be able to incorporate the special and regular education needs of the student.

III. Students Exhibiting Dangerous Behavior

A. If the school district determines that the behavior, which is related to the student's disability, poses imminent danger to others and the parent refuses to agree to a change of placement, the school district may suspend the student for up to seven consecutive calendar days or ten cumulative school days to provide a planning and "cooling off" period. However, the school district may not change the student's placement without parent consent or without securing a court order. A court order may be obtained from a state or federal court and requires that the school demonstrate that the maintenance of the student in his or her current placement poses "an immediate threat to the safety of others."

B. Since schools are limited in the amount of time they have to secure a court order to change the placement of a student exhibiting dangerous behavior, it is necessary for districts to act quickly if the school believes that the parent(s) are likely to request a due process hearing to prevent such a placement change. Steps to be taken in such an event may include:

1. Contact attorney.

2. Set IEP meeting to review "relatedness question," student needs, IEP and placement as described above.

3. Inform parents of district intention to seek court ordered relief from maintaining the placement.

4. Gather evidence to support the claim that the student poses imminent danger to others. Such evidence may include:

    a. Evaluation reports relating to student behavior;

    b. Documentation of direct observations of the student's behavior;

    c. Teacher-completed incident reports;

    d. Records of office referrals;

    e. The student's IEP;

    f. MDT meeting minutes and notations; or

    g. Notices to parents related to IEP meetings and proposed changes.

5. Prepare a contingency plan for use in the event that court ordered relief is not obtained.

GLOSSARY

"Academic year" means the period of a year, which may not be less than the period required by OAR 581-22-503, during which the regular day school is maintained.

"Achieved satisfactorily" means showing progress on an individualized educational program that is reasonably calculated to enable the student to receive educational benefits, showing progress through a curriculum, or advancement from grade to grade.

"Change of placement" means a modification in the student's program which significantly alters that student's IEP. A suspension which totals more than ten cumulative school days or seven calendar days is considered a change of placement. An expulsion is always a change in placement.

"Consent" means that:

1. The person has been fully informed of all information relevant to the activity for which consent is sought, in the person's native language or other mode of communication;
2. The person understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes the activity and lists the records (if any) which will be released and to whom; and
3. The person understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Continuum of placement and service options" means a range of educational options available to meet the needs of eligible students. Educational options include:

1. The regular classroom in the school the student would attend if non eligible.
2. The regular classroom with supplemental aids and services to the education program.
3. Regular classroom instruction for most of the day, with individualized instruction or services provided in another setting for part of the school day.
4. Outside regular classroom placement for most of the school day, with instruction in the regular classroom for part of the school day.
5. Full-time instruction in self-contained classroom, with opportunities for participation with noneligible students in nonacademic and extracurricular activities.
6. Full-time instruction in a self-contained school.
7. Instruction provided in hospital or residential facility settings on an individual or group basis.
8. Instruction provided on an individual basis in a home or special secure setting.

"Day" means 50 percent or more of a school day.

"Education record" means a record, file, document and other material containing personally identifiable information which is directly related to a student and is maintained by a school district or by a party acting for the school district, including medical and psychological reports and records, test protocols, and any records of test results. The term does not include:

1. certain records maintained by law enforcement units of education agencies; and
2. records maintained about student employees.

"EHA-B" means Education for the Handicapped Act, Part B, or PL 94-142.

"Extended School Year program" means the individual educational program provided by the school to a student during periods of time when school is not normally in session, i.e., winter vacation, spring vacation, summer vacation.

"Evaluation" means procedures used in accordance with 34 CFR 300.530-300.534 to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

"Expulsion" means the complete exclusion of a student from his/her classroom placement for disciplinary purposes for a period of time not to exceed the remainder of the current semester or school term unless the semester or term ends within a period of time too short to be effective as a disciplinary measure.

"FERPA" means the Family Educational Rights and Privacy Act or Part 99 of 34 Code of Federal Regulations.

"Guardian" is a person appointed by a court or other authority who acts to represent the interests of the student. A guardian may be appointed as a surrogate parent if the person meets the requirements for a surrogate parent.

"IDEA" means Individuals with Disabilities Education Act or PL 101-476.

"Identify and locate" means to provide prior written notice to the parent of a student that the school district has reason to believe that the student may be a student eligible for special education and related services. A child who is not yet of school age, a student who is currently enrolled in school (public or private) and a student who has voluntarily or involuntarily left school (without graduating) who is still of school age shall be identified and evaluated.

"Independent educational evaluation" means an evaluation that is not conducted by the public agency responsible for the education of the student in question.

"Independent educational evaluator" means a certified or licensed professional examiner who is not a regular employee of the public agency responsible for the education of the student in question.

"Information in the education records violates the privacy or other rights of the student" means that the information contained in the education record concerning the personal characteristics or personal history of the student:

1. if disclosed, would cause adverse consequences such as severe embarrassment for the student or the student's parents; and

2. need not be included in the education record in order for the education record to be appropriately used by the school district.

"Inservice training" means any training other than that received by an individual in a full time program which leads to a degree.

"Maximum extent appropriate" means maximum integration of students who are eligible for special education with students who are not eligible in instructional and non instructional settings with consideration of the nature and severity of their disability and the potential harm to the student.

"Native language" of a student is the primary language used in the student's home, i.e., the language most frequently used for communication between the student and his or her parents, siblings, and other extended family members.

"Parent" means the parent, legal guardian, or persons in a parental relationship, or the surrogate for the parent appointed pursuant to ORS 343.153. Parent does not include a state agency if the student is a ward of the State.

"Personally identifiable" means information that includes:

1. the name of the student, the student's parent or other family member;
2. the address of the student;
3. a personal identifier, such as the student's social security number or student number; or
4. a list of personal characteristics or other information which would make it possible to identify the student with reasonable certainty.

"Placement" means the physical and educational environment where an eligible student receives special education and related services in accordance with the IEP.

"Private school" means an educational institution or agency not operated by a public agency.

"Qualified personnel" means that a person has met the Department of Education approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

"Racially and culturally discriminatory testing and evaluation materials and procedures" means evaluation, referral practices, tests and other evaluation instruments, and test administration and interpretation procedures which result in the actual measurement of racial, cultural or linguistic characteristics rather than an accurate measurement of the factors (e.g., achievement, intelligence).

"Recoupment" means recovery of basic behavioral patterns or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

"Regression" means reversion to a lower level of functioning, which occurs as a result of an interruption in educational services.

"Regular classes" means the classes the student would attend if not eligible.

"Related services" includes transportation; and such developmental, corrective and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, special equipment, reader service, volunteer services to enhance special educational programs, recreation, counseling services, rehabilitation counseling, social work services and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a student with disabilities to benefit from special education, and includes early identification and assessment of disabilities in students.

"Removal" means discontinuance or repeated interruption of any instructional services.

"School age" means a person between five years of age through the school year in which the person turns twenty one years of age. (ORS 339.115)

"Staff development" means activities planned to increase the skills of general and special educational instructional, related services, and support personnel including, but not limited to, attending workshops and inservice training, visiting other programs, individual consultation, and awareness of current research and promising practices.

"Supplemental aids and services" means instructional modifications and/or support services provided in conjunction with regular class placement. Modifications/support services include computer assisted instruction, technological assistance, instructional support provided by paraprofessionals, resource room instruction, itinerant instruction, or peer tutoring.

"Surrogate parent" means an individual who acts in place of a parent in safeguarding a student's rights in the special education decision-making process when the parent is unknown, unavailable, or the student is a ward of the State, and the student has a disability or is suspected of having a disability.

1. "Unknown" means the parent cannot be identified or ascertained by diligent inquiry.
2. "Unavailable" means the public agency, after reasonable efforts, cannot discover the whereabouts of a parent.

"Suspension" means the temporary removal of a student from his/her classroom placement for disciplinary purposes for a maximum of seven calendar days or a total of ten school days during the school year.

"Vocational education," according to PL 94-142 and PL 101-476, means organized educational programs which are directly related to the preparation of individuals for paid or under paid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. PL 94-482 includes industrial arts and consumer and homemaking education programs in its definition of "vocational education." In Oregon, Senate Bill 3565 defines "vocational education" as academic, professional and technical training.